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THE INTRODUCTION OF ENGLISH LAW INTO INDIA

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The Career of Elijah Impey in Bengal, 1774-1783

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To

The memory of my eldest brother

B. B. PANDEY

FOREWORD

UNQUESTIONABLY one of the greatest benefits that can be given to the people of a country is the establishment and application of a rule of law. The protection of the individual against arbitrary rule and imprisonment, the right of the individual to seek and obtain justice whether against the state or against richer or more powerful persons are among the great freedoms of mankind. Throughout history these freedoms have had to be fought for and, once gained, constantly re-asserted. Looking back on Britain's record in her government of India it may be agreed that it is not very useful to try to calculate a balance sheet of rights and wrongs, but few would question the enormous importance to modern India and the world of the British creation of a rule of law in the context of the Pax Britannica.

Dr Pandey has explored this important theme in the pregnant period of Sir Elijah Impey's chief justiceship of the new Supreme Court in Bengal, demonstrating how Impey and his colleagues had not only on the one side to resist the attacks of the East India Company's Supreme Government but also at the same time on the other to protect Indians against the corrupt and excessive exercise of power by the Company's officers, whether British or Indian. Impey's task was made all the more difficult because the power of the East India Company in Bengal was rising within the framework of the Mughal empire, which itself was by nature dictatorial, arbitrary and coercive; and there were men who thought that a system of rule would work to the advantage of the varied commercial and colonial purposes of the Company and its officers. Impey was impeached for his actions but today he will be the more respected because against heavy pressures from all sides he correctly discerned and interpreted what was to be the enduring and decisive will of the London Parliament.

Impey's career as Chief Justice of the Supreme Court in Bengal has been described before but usually as a reflection of the Warren Hastings's story, and the tendency has therefore been to see him purely in terms of Hastings's policy. James Mill and Macaulay in particular popularised the Whig view of the existence of a Hastings-Impey conspiracy, a view which Henry Beveridge later accepted and

which James Stephen attempted to refute. But in the dust of this controversy Impey's essential and personal contribution was lost to sight. Dr Pandey, through a close examination of Impey's private correspondence, is able to clear the air and to show that Impey was not a mere tool of Hastings, and that on the contrary he adopted a consistent and independent policy in giving life to the Supreme Court and in applying English law and in defending them both, even against Warren Hastings himself.

In short, the true story of Impey in India is much more complicated than earlier writers had presented or perhaps even wished to present. And for the first time too, Dr Pandey has set out with detail and clarity the successive, great cases tried by Impey; the Nandkumar Conspiracy and Forgery cases, the Patna case and the Touchet petition, placing each one in the context of day-to-day events in Calcutta and Bengal, so revealing the motivation of the parties concerned and facilitating our understanding of the purely legal aspects. In so doing he has directed a new beam of light on Warren Hastings's governor-generalship, and brought Elijah Impey for the first time into clear and full relief.

C. H. PHILIPS

PREFACE

PREVIOUS writing on the problems of British Indian history at the time of the Regulating Act of 1773 has concentrated attention on the figure of the Governor-General Warren Hastings, with only occasional glances at his contemporaries, in particular Sir Elijah Impey and Philip Francis, primarily with the object of obtaining additional evidence in support of the author's judgment on Hastings. Indeed, Hastings dominated the political scene, but this was not the only sphere in which important changes were taking place at this time. In particular the English judges of the Supreme Court in Calcutta were attempting to introduce for the first time into India the rule of law, which was to have a far-reaching influence on Indian society. In this book, I have attempted to study the career of Impey, who was the first Chief Justice of the first Supreme Court of India and to describe and analyse the process by which he introduced the principles of English law into India and the consequences of this.

Impey arrived in Bengal with a commission to administer justice according to English law and to prevent the exploitation of Indians by the servants of the East India Company. He realised that in order to administer justice on the principles of English law it was necessary to maintain the independence of the Supreme Court, and to regard both Europeans and Indians as equal in the eyes of the law. To prevent exploitation and corruption it was further necessary to bring all potential offenders, in particular the revenue collectors of the Company, under the jurisdiction of the Supreme Court, which was at that time the only Court which could claim to be impartial and uninfluenced by the race, position or wealth of the offender.

The introduction of egalitarian principles into the newly conquered territory of Bengal raised problems of great magnitude. The main question was whether the Company's government in Bengal was to be actuated by the arbitrary decision of the rulers or it was to be a government by law, protecting the life and property of the governed. For example, the abuse of the discretionary power of the Company's servants to imprison an Indian without bail or trial until the alleged dues of the Government were collected from him was strongly opposed by Impey, who tried to stop the practice by issuing writ of Habeas Corpus.

As a result of the position taken up by the Supreme Court on the first question there arose many other problems, in particular the political question of whether the equal treatment of Indian and Briton by the Court would tend to undermine or strengthen British power in India. A third question involved the consideration of who was the sovereign of Bengal, was he the Nawab of Bengal, the East India Company or the British Crown? Contemporary British opinion did not regard the British possessions in India as a 'Colony', an 'Empire', or an extension of the British State. On the other hand, the Company's government, because of its strong links with England, could not appropriately be regarded as a local Indian power like the Mahrattas.

On these and other important questions the Supreme Court and the Company's government represented by a Supreme Council were opposed. The Council upheld the commercial and political interests of the Company as against the Court's insistence on justice and equity. These questions were not resolved by the H. M. Government in England which, due to its preoccupation with the revolt of the American Colonies, remained indifferent towards Indian affairs. Left to themselves the councillors became involved in a series of quarrels with the judges. A crisis was reached, out of which the Supreme Court emerged subdued. Its powers and jurisdiction were curtailed and its Chief Justice, who had during his nine years' stay in India stood against corruption and oppression, ironically enough, was recalled to England to be impeached for corruption and oppression. But the principles which Impey and his colleagues had introduced into India survived.

Impey's role as the first Chief Justice of the Supreme Court has been inadequately treated by both his critics and his defenders. This is due in part to the fact that his career has not been studied separately from that of Hastings. He has been regarded as a friend and associate of Hastings and accordingly criticised or praised, according to the author's opinion of the Governor-General. Indeed Impey was a friend of Hastings, but he was also an advocate of a system, which he endeavoured to introduce in the face of persistent opposition from the Company's government in India including Hastings himself. This aspect of Impey's career in India has hardly been noticed by his critics.

Edmund Burke, the outstanding contemporary accuser of Hastings and Impey, was misled into believing that Hastings's regime in

India was characterised by repression and corruption and that Impey, being a one time school friend of Hastings, abetted him in all his activities. In preserving Indian laws and customs, and in checking the arbitrary exercise of governmental power, Impey, in fact, tried to implement the very principles which Burke himself advocated.

In 1818, twenty-one years after the death of Burke, James Mill's *History of British India* was published. Mill, who had never been to India, wrote his *History* with preconceived ideas, selected his facts principally from the biased reports of the Parliamentary Committees and arranged them to suit his own conceptions. Painstaking though he was he did not bother to read the lengthy reports of the Supreme Court cases. As a result, he saw nothing in the English judges but a thirst for power.

In 1841 appeared G. R. Gleig's *Memoirs of Warren Hastings*, which was reviewed in the *Edinburgh Review* by Macaulay in the same year. Gleig was the first writer to use Hastings's private papers and presented a favourable account of Hastings, exonerating him from several of the charges which had been brought against him in the past. Macaulay demolished Gleig's reconstruction and in his masterly journalistic style popularised the traditional Whig version of the Hastings-Impey story. In his 'deliberate opinion'—which was formed without any further research—Hastings and Impey were conspirators, who had judicially murdered Nandkumar.

In keeping with the anti-Hastings tradition of the nineteenth century liberals was Henry Beveridge, himself a radical and a staunch supporter of the Ilbert Bill. While serving as a district judge in Bengal, he published two articles in the *Calcutta Review* of 1877 and 1878, which later in 1886 were collected in the book—*Trial of Nandkumar: A Narrative of a Judicial Murder.*

In studying the trial of Nandkumar in isolation he could not comprehend the general role of the Supreme Court and of its judges. His attitude was circumscribed by the narrowness of his subject. Even on this subject his research was limited to the scanty materials which were then available in India, consisting mainly of a few printed reports and a few documents found in the archives of the Calcutta High Court.

Beveridge's articles in the *Calcutta Review*, however, aroused the interest of James Stephen who approached the subject from a very different viewpoint. A believer in a strong central government

for India, Stephen found himself in sympathy with the ideas and methods of Hastings's government. He first intended to study Hastings but realising that his employment as a judge of the Queen's Bench Division could hardly afford him sufficient leisure to study the enormous materials available on the subject, he confined himself to the career of Impey, with the main purpose of refuting Beveridge's conclusion that Nandkumar fell victim to a conspiracy between Hastings and Impey.

Stephen for the first time examined, though hurriedly, Impey's private papers, which had been presented to the British Museum in 1846 by his son Barwell Impey. His purpose in undertaking the work and his legal background determined the scope and method of his inquiry. Like the judge of a superior court reviewing the proceedings of a lower court, Stephen virtually confined his inquiry to Impey's judicial conduct without further investigating Impey's ideas, motives and conflicts and without tracing the influence of political factors on the working of the Supreme Court. Hence his book—*The Story of Nuncomar and the Impeachment of Impey*, which appeared in 1885, did not go far beyond exonerating Impey and Hastings from some of the traditional charges.

Looking at the previous writings on Impey it seems paradoxical that he should have been attacked by nineteenth century radicals and liberals and supported generally by philosophic historians, who believed in autocratic British rule for India. For judging even by the higher standards of nineteenth century liberalism the author of the following lines appears more of a liberal than an advocate of autocracy:

> "In and near Calcutta the court has very nearly had the complete effect of giving security to the persons and property of the natives. They feel themselves entitled to the rights of humanity in common with those Europeans, the meanest of whom they before considered as their Lords, and they now have courage and confidence sufficient to assert these rights." (Impey to Johnston, 18 August, 1778, Impey Papers, Vol. 16259, p. 208).

By introducing for the first time into India the main principles and forms of English Law—the rule of law, the law of evidence, the procedural law, the *writs*—the Supreme Court of Bengal guaranteed to the Indians the enjoyment of the fundamental rights to person

and property, to freedom of speech and action. As a result the Indians gradually ceased to become servile to their English masters. Further, they developed for the first time a confidence in the impartiality of the judicial organ of the state. This change in the Indian attitude was noticed (and frequently lamented) by a number of Britons in India:

> "In 1774 (till October) every native of whatever rank got out of his *palkee* or vehicle, or off his horse when a Sahib passed by, salaamed and with his hands placed in a modest contact and his eyes turned down while his head inclined in humility, waited till the white man had passed. The Battle of Buxar only ten years before brought such debasement into fashion. The arrival of the Supreme Court stopped it finally." (Col. J. Young to Lord Bentinck, 20th April, 1834. Bentinck Papers)

This book is substantially a London University doctoral thesis on which I worked in the years 1956-58 under the most able and patient supervision of Prof. C. H. Philips, who has guided and encouraged me ever since I ventured on historical research and from whose eminent scholarship I have immensely benefited not only in this but other works produced since the beginning of our fruitful association. I take this opportunity of expressing my deepest sense of gratitude to him. I am, indeed, most grateful to my friend and colleague Dr. M. E. Yapp for his having taken the enormous pain of reading the typescripts and for his corrections and suggestions. I am also indebted to Miss Jacqueline Lougher, who typed and retyped the texts, to Dr. Louie Hamilton, who helped me in the preparation of the index and to Mr. S. C. Sutton (librarian, India Office Library) and his staff, including the paper keepers, who have provided immense facilities to me at the library over the last eleven years.

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31st August, 1966

CONTENTS

	Foreword	v
	Preface	vii
I	The Background	1
II	Impey and Nandkumar: The Conspiracy Case, 1775	43
III	Impey and Nandkumar: The Forgery Case, 1775: The Commitment of Nandkumar: May 1775	72
IV	Impey's Plan for the Better Administration of Justice, 1776	110
V	The Conflict Between the Court and the Council: The Patna Case, 1777-79	131
VI	The Opposition to the Supreme Court: The Touchet Petition, 26 February, 1779	148
VII	The Crisis: The Kasijora Case, 1779-80	176
VIII	The Last Three Years: A Temporary Settlement, 1780-83	196
	Bibliography	235
	Index	243

CHAPTER I

THE BACKGROUND

The Rule of Law

The foundation of the English legal system in India was laid in the period between 1774 and 1783. The rule of law and the independence of the judiciary are the main features of this system. By the rule of law we understand, first, "the absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power which excludes the existence of arbitrariness of prerogative or even of wide discretionary authority on the part of the government"; secondly, it means "equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts".[1] The independence of the judiciary signifies the security of the judges in their office and their freedom from governmental influence and public pressure.

These doctrines had been evolved in England and in the eighteenth century they had become the fundamental principles of the English constitutional law. The earliest assertion of the rule of law was made in the Magna Carta, that no person however great and powerful could disregard the ordinary law of the land. The independence of the judiciary was finally established by the Act of Settlement, 1701, which provided that the judges should not be removed from their offices, except at the request of both Houses of Parliament. This Settlement was the outcome of a long conflict during the sixteenth and seventeenth centuries between the Court and the Crown, the former holding the supremacy of the law as against the latter's claim to arbitrary powers. In the seventeenth century this conflict had culminated in Sir Edward Coke's opposition to James I, who claimed to override the law by his prerogative whenever he pleased. Though Coke lost the judgeship of the Court of Common Pleas in 1616, his cause survived.

A similar conflict between the judicial and executive powers followed the introduction of the basic principles of English law into India. This conflict which first started in the Bengal presidency with the establishment of the Supreme Court at Calcutta in 1774, was

[1] Dicey, *Law of the Constitution*, 202.

extended to Madras and then to the Bombay presidency when Supreme Courts were established at Madras and Bombay respectively in 1801 and 1825, and it persisted during the whole period of the Company's rule in India. The differences between the evolution of the rule of law in England and its extension and growth in India lies in the fact that in England it was evolved from within as a result of the conscious efforts of Englishmen to safeguard their individual freedom from the arbitrary powers of the Crown, whereas in India it was imposed from without by English judges. As a result, the conflict that followed the introduction of the rule of law in India remained, in the first phase, one between the two professional classes of the ruling race—the English lawyers and judges on the one hand and the English merchants, administrators and statesmen on the other. The role of Indians, the safety of whose person and property was at issue, remained passive in this stage of the conflict.

The earlier English courts which had been established by charters in the English factories from time to time—first at Surat in 1623, then at Madras in 1661 and 1683 and at Bombay in 1670 and 1686 —were so limited in their jurisdiction and composition that they could hardly become the vehicle for the transfer of the English legal system into India. Their jurisdiction was confined to the factory town and in the earlier stages to the British inhabitants of the town. Indians remained outside the impact of the English legal system. The judges of these courts were civilians who had no training in English law, which they were supposed to administer. As a result, they decided cases according to their own sense of justice and fair play. From the inception of the first factory at Surat in the first decade of the seventeenth century until the establishment of the Supreme Court at Calcutta in 1774, only two professional lawyers had held judicial offices in India; Sir John Biggs at Madras and Dr. John at Bombay. Both had been sent to India by the Company as the judges of the Admiralty courts which were established at Madras and Bombay by the Charter of 1683. Of these two, Dr. John attempted to establish the independence of his court by taking cognizance of certain accusations against the governor. The governor lost no time in dismissing him from his office. Thus, while the courts functioned under the absolute control of the governor and council in each presidency the introduction of the principles of English common law remained a remote possibility.

These limitations of the seventeenth century English courts in

India applied equally to the mayor's courts which were established at each of the three presidency towns by the Charter of 1726. The judges of these courts were laymen and they functioned under the supervision and control of the governor and council in each presidency. Thus, before the establishment of the Supreme Court at Calcutta in 1774, there did not exist in India any English court which was independent of control by the executive, which administered justice equally to Indians and Europeans, and whose judges had been recruited from the Bar.

Eighteenth Century India

The characteristic feature of the eighteenth century decadence of India was the total dependence of the individual's right to life and property upon the arbitrary will of anyone who happened to wield power. This in part was due to the great political anarchy that endured throughout the century from the death of Aurangzeb in 1707, but in the main it was due to the long-established Indian system of personal autocratic rule, which recognized no right fundamental to the individual.

Even so, the life and property of the people were for the most part safe in the days of the Great Mughals. Peace and order prevailed throughout the empire and, there were no foreign invasions or internal rebellions of any significance. The people were left undisturbed in their traditional village life. The village was a self-sufficient unit. The villagers were bound together by ties of caste, relationship and occupation. The elders of the village formed the village council (*Panchayat*), to which the villagers referred most of their disputes. The headman of the village represented the village to the outside world. The village had its own artisans, shopkeepers, banker, priest and watchman. There were, of course, the servants of the Mughal at provincial districts and sub-divisional levels but their main concern was to maintain order and to collect revenue directly from the cultivators. The villagers knew what percentage of their land-product they were to give to the state. They were not subjected to exactions either by the servants of the state or by a horde of marauders. This village system lasted where nothing else has survived.

But the situation changed with the disintegration of the Mughal Empire. The provincial governors became independent rulers of the provinces and entered into internecine wars with neighbouring

dominions or distant rivals either for more conquests or just for the preservation of their usurped power. The new rulers needed money to finance the wars. The merchants were squeezed of their savings. A new set of revenue collectors appeared in the villages who subjected the cultivators to enormous exactions and extortions. Those who opposed or were suspected of being disloyal were summarily dealt with. Trade was disrupted and the cultivation of the lands abandoned. The merchants and the peasants on whose skill and toil the prosperity of the society depended, lost incentive to invest or produce more than what was needed for their bare existence. The political disorder led to the economic decay of the traditional society but its most serious repercussion was felt in the attitude of the people towards their rulers. The people grew apathetic towards their Indian masters. It did not matter to the people whether their rulers were Hindus, Muslims or Sikhs, for most of them were unscrupulous in their exactions and uninterested in the well-being of their subjects. The Indian rulers failed to give peace, order and good government to their people and in turn lost their attachment and support. A ruler was feared and obeyed while he held power but as soon as his power declined he was deserted and forgotten by his courtiers, generals and people.

In the latter part of the eighteenth century there were two major powers in India; the Hindu Marathas, who had the ambition, and the British who had the potentiality for an Indian empire. The Marathas represented the worn out traditional system which was miserably inferior to the British system in spirit and method. The British system was, what we may call modern; a product of sixteenth century renaissance and scientific discoveries, based on reason and philosophies, vigorous and self-confident.

The Maratha kingdom which was established by Shivaji in 1674 on the western coastland of India had grown into an empire in the sixties of the eighteenth century. It extended from the boundaries of Mysore in the south to the gates of Delhi in the north and included within it the western coast, Gujrat, Malwa and the vast central area between the Ganges and the Vindhya Mountains. The political unity of the empire was maintained while it was centrally controlled and directed from Poona. But soon after their disastrous defeat at the battle of Panipat in 1761, the Maratha empire started disintegrating. The five confederates of the empire (the Peshwa at Poona, the Gaekwar at Baroda, the Bhonsla at Nagpur, Sindhia

at Gwalior and Holkar at Indore) turned into five independent rulers.

Whether united or divided, the Marathas had no answer to the problems that faced India in the latter half of the eighteenth century. The structure of their government was designed for a local, not an all-Indian realm. A distinction was made between Maratha land (Swaraj) and non-Maratha land. The inhabitants of Maratha land were first class citizens who enjoyed the benefits of law, order and good government. Those who lived outside Maratha land, whether Hindus or Muslims, were to all intents and purposes aliens, fit to be subjected to raids and exactions called *Cauth* and *Sardeshmukh*. As a result, the Marathas came to be dreaded all over the country as raiders and marauders, more so in Bengal which suffered their raids incessantly from 1740 to 1749. Thus the Maratha power with its strong anti-Muslim bias, its medieval structure of government and methods of warfare was ill-suited to the task of building a lasting empire in India.

Among the other Indian rulers—Haidar Ali of Mysore, Nizam Ali of Hyderabad, the Nawab of Bengal, the Wazir of Oudh, the Chief of Ruhellas and the cis-Sutlej Sikh Chieftains—none was sufficiently strong, resourceful or secure to bid for all-India supremacy.

Among the European maritime nations the British had emerged as most powerful of all after their victory over the French in the three successive Carnatic wars (1740-63). By the Peace of Paris, 1763, the French were completely shut out from northern India, though they were allowed to retain their small possessions of Chandernagore in Bengal and Pondicherry and Mahé on the eastern coast of India.

The Portuguese who were in possession of Goa, Daman and Diu had long since ceased to be competitors for an all-Indian empire and the Dutch still holding Cochin on the Malabar coast and Chinsura in Bengal had by the middle of the eighteenth century little connection with direct trade between India and Europe. Thus by 1763 the English Company was beginning to emerge as the dominant European power and thenceforward the struggle for supremacy was largely between the English and the Indian powers.

From the first decade of the seventeenth century, when the East India Company established its first factory at Surat, until 1757 when it encountered Sirajud Daulah at the battle of Plassey, the

Company remained solely a trading concern, having never harboured an ambition for territorial possessions and political power. It had, of course, during this period, fought several battles but only to acquire more trading facilities, outdo its European rival or in self-defence. The Company's possessions in 1763 consisted of Calcutta and the twenty-four parganas in Bengal, Madras, Fort St. George and the Northern Circars on the eastern border of India and Bombay and Surat on the western coast. But the easy victory at the battlefield of Plassey, won partly by intrigue and partly by superior skill in warfare, reassured the British of their superior strength. From then onwards they assumed a bold, confident and superior attitude towards the Indian powers. In Bengal they virtually became the real power, pulling down and setting up Nawabs according to what best suited the commercial interest of the Company and the private purse of the Company's servants. When the Company became the Diwani of Bengal Subah in 1765, there was at once posed a conflict between the commercial interests of the Company and its responsibilities as a territorial power and when this was resolved in 1772 in favour of resuming direct responsibility for the good government of the provinces, there logically followed a conflict between the British and the traditional Indian systems of government and law.

Bengal Commerce and the Ascendancy of the East India Company

The Bengal Subah was composed of Bengal, Bihar and a few adjoining districts of Orissa. It was the richest province of India, including in its area the most fertile part of the vast Gangetic plain, watered by many navigable rivers. The main agricultural products of the Subah were then as now rice, wheat, sugarcane, tobacco, cotton and betel. It had been always remarkable for its commerce. Long before the advent of the European traders the Subah had exported raw silk, opium, cotton cloths, rice, ginger, turmeric and long pepper to Africa, the Middle East and South East Asia. Bengal muslins and cotton cloths had gained a world market. It was also the principal emporium for saltpetre, a prodigious quantity of which was exported from Patna. The rich exuberance of the country had given rise to a proverb in common use among the European traders that "the kingdom of Bengal has a hundred gates open for entrance, but not one for departure".[1] The European

[1] Bernier, *Travels in the Mughal Empire*, 437.

traders had been attracted to Bengal from the beginning of the seventeenth century because of its rich prospect of trade, easy access by sea and the comparative autonomy which it enjoyed, due to its long distance from Delhi. Since 1760 the economy of Bengal was dominated by the needs of the European market.[1]

The growth of the East India Company's trade in Bengal was partly due to its superior organization as compared with its European rivals and partly because of the privileges which it had obtained from the central and local governments of the Mughals. As early as 1651, for example, the Company had obtained from the then governor of Bengal, Prince Shuja, permission to trade freely in Bengal without the payment of any custom duty. In return the Company had undertaken to make an annual payment of Rs. 3,000 only. This privilege was confirmed by Aurangzeb in 1690 and re-confirmed by the Emperor Farukhsiyer in his *firman* of 1717. The Dutch and the French, on the other hand, having never obtained a similar privilege, had to pay 2½% duty on their goods. The English had further acquired the right to administer justice themselves. The Dutch and the French on the other hand had to apply to Mughal law officers for redress against their Indian employees, in particular against the weavers and dyers. These privileges raised the power and affluence of the English Company and by the middle of the eighteenth century gave it the foremost commercial position in Bengal.

The servants of the Company did not misuse these privileges so long as the Nawabs of Bengal possessed the power to enforce their will. But after 1757, when the Company emerged as the supreme military power in Bengal, the privileges were openly abused and the customary restrictions disregarded. By the Imperial *Firman* of 1717 the Company had been allowed to import and export its goods duty-free. The main purchases of the Company in Bengal were cotton piece goods, raw silk and saltpetre, which were made with the proceeds of cargoes of silver, base metals and woollens exported from Europe. The profits of the Company arose from the difference between the sale prices of Indian goods in the London market and the costs of outward cargoes, freight charges, custom charges and current expenses.[2] This traditional pattern of the Company's export and import trade underwent changes when the Company became

[1] Sinha, *The Economic History of Bengal*, Vol. I, 98-99.

[2] Furber, *John Company*, 14.

the supreme power in 1757 and again in 1765 when it acquired the Diwani of the Bengal Subah. After 1757 the servants of the Company claimed exemption from duties for their private inland trade. They conveyed their goods from place to place duty-free, while the goods of Indian merchants were heavily taxed in transit. The Nawab's authority was openly disregarded and his officers were punished when they tried to interfere. In prosecution of their private trade the Company's servants greatly oppressed the *ryots* and the merchants. The Bengal manufacturers were forced to sell their goods at cheaper prices and to buy the Company's goods at higher prices. In the words of Mir Kasim "they forcibly take away the goods and commodities of the Reiats, merchants, &c., for a fourth part of their value; and by ways of violence and oppressions they oblige the Reiats, &c., to give five rupees for goods which are worth but one rupee".[1] As a result, the country traders were ruined and the Nawab's revenue declined. From 1757 to 1765, each Nawab, who was elevated to the throne by the Company had to pay enormous sums of money as tribute to the Company and presents and bribes to the Company's servants. The total payments made by the Nawabs between 1757 and 1766 were calculated by the Parliamentary Select Committee of 1773 to amount to £5,940,498 of which £2,169,665 represented presents to the Company's servants, while £3,770,883 was received in the Company's treasury.[2] Thus, on one hand while the Nawab's traditional sources of revenue were fast declining owing to the duty-free trade carried on forcibly by the Company's servants, on the other he was obliged to pay out enormous sums of money as tributes and presents. New taxes, therefore, were imposed on the *ryots* and the rich Indian merchants were sometimes forced to lend their total savings to the Nawabs.

The Revenue History of Bengal

The Mughal system of government ceased to operate in Bengal when the province became independent of the empire. Though the Mughal government was personal and dictatorial at the centre, a balance of power had been maintained in the provinces. Each province was ruled by a *Subahdar* (governor) who commanded a body of troops and was responsible for security and order. His powers were counter-balanced by a *Diwan*, who was responsible

[1] Nawab's letter, May 1762 quoted in Dutt, *Economic History of India*, 23.

[2] Report, Select Committee, 1773.

for collecting the revenue and paying the troops. He remitted the revenue directly to Delhi. These two high provincial officers were separately responsible to the central government and they rarely stayed in one appointment for more than four years. Thus, the separation of the military from the revenue powers, while it worked, secured the empire from disintegration, for, an ambitious governor could not revolt without the means to support his troops and a *Diwan* had no troops to revolt. This system further protected the cultivators of lands from unlawful exactions and exploitation for there were in operation the Mughal revenue regulations and courts of justice which a Diwan could not disregard. The state's share in land produce was fixed as it was in the case of Crown lands directly collected from the cultivators by the provincial revenue officers.

Bengal became virtually independent of the imperial government in 1713 when Murshid Kuli Khan (alias Jaffier Khan) bought the *Nizamat* (governorship) of Bengal from emperor Farukhsyer.[1] From then onwards the governor became the absolute ruler of the province, his office tended to become hereditary, the *Diwan* served as his subordinate officer, the original Mughal revenue settlements with the *ryots* were disregarded and new taxes were increasingly imposed.

The original revenue settlement of Bengal called *Tumar Jumma*, was made during the reign of Akbar in 1582 by Todar Mal.[2] The settlement was based on the accounts of rents paid by the *ryots* in the previous years. The total taxable area of the Bengal Subah was divided into three broad classes. The first class consisted of *Khalsa* or Crown lands directly administered by the revenue department of the provincial government. The second class of lands was called *jagirs* or assigned lands, granted to officers for their maintenance. The third class consisted of the lands of the zamindars. These zamindars were the autonomous chiefs in Bengal at the time of the Mughal conquest of the province. They were confirmed in their possessions on the acceptance of Mughal vassalage.[3] In the *Khalsa* the revenue was either directly realized from the *ryots* by the government officers

[1] Murshid Kuli Khan was born of Brahman parents, was educated in Persia and brought up in the Muhammadan faith. He was Diwan of Bengal at the time of Aurangzeb's death.

[2] John Shore's Minute, 18 June, 1789, 5th Report, Select Committee., 1812, 169-244.

[3] Raychaudhuri, *Bengal under Akbar and Jahangir*, 25.

—*kroris* and *faujdars*—or leased out to revenue farmers as *mustajirs*. The *jagirs* were in most cases granted for a temporary period and could be transferred from one officer to another. The zamindar's tenure was more stable and within his domination he was free to manage the revenue as he pleased without any interference from the government. The zamindars paid a fixed tribute to the government.

The main feature of the revenue history of Bengal, from the original settlement of 1582 until the acquisition of Diwani by the Company in 1765, is the increasing number of new taxes (*Abwabs*) imposed on the cultivators.

The total rent of the whole province of Bengal in 1582 was one crore and seven lakhs of rupees. After an interval of 140 years in 1722 the revenue was increased only by Rs. 24,18,298 including a tax of Rs. 2,58,857 imposed by Murshid Kuli Khan. But from 1722 onwards the number and amount of taxes began to increase steadily and the total of the new impositions made during the period between 1722 and 1763 amounted to Rs. 1,16,20,089 which was more than the total original assessment of 1582.[1] More than fifty per cent of the total amount of the taxes imposed during the period of forty one years (1722–63) were imposed by Kasim Ali between 1760 and 1763. This can be partly explained by the fact that Kasim Ali needed more money to meet the Company's demands on one hand, and on the other, to make up for the loss of the revenue caused by the duty-free private trade of the Company's servants. These imposts, however, were founded upon principles unknown to the Mughal Constitution. The Nawabs of Bengal imposed them upon the zamindars, who levied them from the *ryots*.

During this period changes also took place in the method of revenue collection. The method of collecting revenue directly from the *ryots* in certain parts of *Khalsa*, supposed sufficient knowledge and experience in the collector employed. This system worked during the heyday of the Mughal administration but was gradually abandoned during the disintegration of the empire. Large revenue areas were assigned to the highest bidders or the local zamindars. The intermediaries agreed to pay a fixed sum to the government. After the agreement the government was no longer concerned as to what amount these intermediaries realised from the *ryots* and how

[1] 5th Report, Select Committee., 1812, 221. Amount of taxes imposed between 1722 and 1763. By Sujah Khan (1722-28) Rs. 19,14,095 By Aliverdi Khan up to 1755 Rs. 22,25,554 By Kasim Ali 1760 and 1763 Rs. 74,81,340.

they got it. Most of the zamindars were not qualified for the task. They were ignorant of the common forms of business, which in general was exclusively conducted by their servants. A zamindar, possessing an exclusive district, having made a settlement with the government, relet in portions to several farmers; they again made over their leases, in whole or in part, to others; and these again to renters of inferior denominations. The head farmer often obtained the leases at a lower rent from the zamindar. Impositions prevailed through all the gradations of renters to the *ryots*, "hence proceeded the alienations of lands, unknown to the zamindars or his officers; fabrications and mutilations of accounts at the end of a lease".[1]

This system of finance had a reference to the despotic system of government, the main characteristics of which were summary investigations and arbitrary punishments. When a *ryot* complained against a superior officer, or a zamindar against a government official, "the inquiry seldom went beyond presumption, which was deemed sufficient to justify the infliction of punishment".[2] Under this system the power of every department centred in one person. For example, the Diwan as the head of the revenue department could dismiss upon the least suspicion any officer of the department, could confiscate his property and inflict upon him severe punishment if his offence was proved. The coercion and rigour of such a government gave vigour and swiftness to its acts.

When the Company as the Diwan of Bengal inherited in 1765 this system of revenue and government the question that immediately arose was whether to retain this system or to replace it by the British system of rules and regulations. In essence the conflict was between the dictatorial system and the rule of law, between 'short injustices' and 'protracted justice'. Despotism, on the one hand, was inconsistent with the British constitution, on the other, it seemed well suited to the commercial interests of the Company and its servants.

The commercial interests of the Company's government in Bengal lay in augmenting the revenue of the *Subah* in order to meet the demands of their employers in London and to increase their investment in India. The interests of the Company's servants, who were paid ridiculously low salaries by their employers and whose sole aim in coming to India was to make a quick fortune by private

[1] *Ibid.* [2] *Ibid.*

trade and return to England, lay in increasing their sources of private income.

Apart from these factors, the Company had hitherto been solely a trading concern. It had never before been stirred by dreams of conquest or thoughts of empire. Until 1765 it had no political status, though its private army had been employed since 1757 in setting up or pulling down Nawabs in Bengal. The form of the Company's governments at Calcutta, Madras and Bombay had been designed mainly to carry on trade with India and to maintain law and order within the bounds of its trading stations. Thus, the servants of the Company had neither training nor interest in the details of civil and revenue administration. Along with these factors went the fear that assumption of the direct administration of the Diwani might arouse the jealousy of other European powers in Bengal.

These factors weighed heavily with Lord Clive and his colleagues when they decided to adopt a system of masked government in 1765. The Company was to be the power behind the puppet Nawab, while the internal government and the responsibility for its functioning were left in the Indians' hands. Thus, the traditional system was allowed to function under the general supervision of the Company's residents at Murshidabad in Bengal and the Company's Chief at Patna in Bihar with the added drawback that now the power lay in the hands of the Company and the responsibility with the Nawab.

The period between 1765 and 1769 saw the emergence of farmers of revenue who in certain districts displaced the hereditary Rajas and zamindars. When a Raja or zamindar failed to pay his rent in time he was dismissed and his lands re-alloted to the highest bidder who could be a government servant (*faujdar*, *amin* or *tahsildar*) or any other farmer of revenue undertaking to pay the rent regularly. These newcomers were not in the same way interested in the district and the well-being of the *ryots* as the hereditary zamindars used to be. Since their tenure was temporary they wanted to make the best of it while it lasted. After their rent-roll with the government had been settled, the farmers entered into agreements with the *ryots*, demanding from the latter higher rents than they had been used to. On top of this the *ryots* were subjected to various taxes under the name of *matutes* or *abwabs;* even after paying the rent and cesses the *ryot* was not spared. At the end of the year wherever the collector of revenue knew that the *ryot* had made any gain, he surely seized

it notwithstanding the agreement being justly fulfilled.[1] The *ryots* could not get any redress locally, for, the collector, farmer or zamindar also presided over civil and criminal courts of his zamindary.

The worst sufferers under the system of dual government were the *ryots*. Since they were both landholders and manufacturers, they were victimised on one hand by the servants of the Company in the rapacious prosecution of their private trade and on the other by the Indian revenue officers in their oppressive exactions.[2]

This state of affairs was noticed and deplored by some of the most far-sighted and conscientious of the Company's servants in Bengal. While Warren Hastings had complained to the President and Council at Calcutta in 1762 against the misuse of the Company's privileges by its servants and of the oppressions committed under the sanction of the English name,[3] Robert Becher, who had as the British resident stationed at Murshidabad supervised the civil administration of the Bengal Subah since 1765, reminded the President and Council at Calcutta that the condition of the people of the province had been worse than it was before the acquisition of the Diwani. He believed that this state had proceeded from the following causes—"the mode of providing the Company's investment; the exportation of specie instead of importing large sums annually; the strictness that has been observed in the collections; the endeavours of all concerned to gain credit by an increase of revenue during the time of their being in station, without sufficiently attending to what future consequences might be expected from such a measure; the errors that subsist in the Manner of making the Collections, particularly by the employment of Aumils." These appeared to him the principal causes why, "this fine country, which flourished under the most despotic and arbitrary government, is verging towards its ruin while the English have really so great a share in the Administration".[4] Becher's idea of the Company's valuable possessions in Bengal, was that they should be esteemed permanent, "and such measures pursued as will be most likely to make them so; and that measures that tend only to a present increase of Revenue

[1] G. G. Ducarel's letter to Richard Becher, quoted in Banerjee, *Early Land Revenue system in Bengal and Bihar*, Vol. I, 30.

[2] Bolts, *Considerations on Indian Affairs*, 191-94.

[3] Hasting's letter to the President and Council, 25 April 1762, quoted in Dutt, *Economic History of India*, 22-23.

[4] Becher to the President and Council, 24 May, 1769. Bengal Select Committee

or Investment, with an apparent prejudice to future times are destructive or Investment, with an apparent, prejudice to future times are destructive to the country, and not for the true interest of our employers".[1]

The representations of Becher were favourably received by Governor Harry Verelst and his councillors. They realised the gravity of the situation and the need to protect the *ryots* from the oppressions and tyranny of revenue farmers. They further realised the error of delegating authority and trust to one or few, which required the abilities and activities of many to execute. This error, in their opinion, had given rise to the complex state of corruption and lawlessness.[2] They were convinced that the civil government of Bengal should no longer be run exclusively by two men, Muhammad Raza Khan and Shitab Roy, who, allowing the clearest preference for integrity, ability, and attachment amongst their countrymen, could not be supposed superior to temptation and at least "ought not in good policy to be trusted so extensively and independently as has been necessarily the consequence of the present system".[3]

This was a significant decision for, it implied that the Company had come to realize its responsibility for the well-being of the people of Bengal, which it thought, could be well accomplished by replacing the autocratic system by a British system of checks and balances. The first ameliorative measure, the appointment in 1769 of English supervisors, one for each district, though well-intentioned, failed to achieve any result. These supervisors were required to supervise the collection of revenue in their respective districts, inquire into the state, produce and capacity of lands, to abolish the arbitrary taxes imposed upon the *ryots* by the zamindars or collectors, to enforce justice where the law demanded it, and finally to impress upon the *ryot* that "he would stand between him and the hand of oppression". They were asked by the President and the Council to explore and eradicate numberless oppressions, "which are as grievous to the poor as they are injurious to the Government" and display "those national principles of honour, faith, rectitude and humanity which should ever characterise the name of an Englishman".[4] But these supervisors succumbed to the temptation of using their power and position in the furtherance of their own

proceedings, 18 September, 1765 to 16 August, 1769. Quoted in Banerjee, *Early Land Revenue System in Bengal and Bihar*, 37.

[1] *Ibid.* [2] Verelst, *A View.* [3] *Ibid.* [4] *Ibid.*, App. 226.

private trade, which they had been allowed to continue by the Bengal Select Committee in view of the low salary they were paid. Since they had the powers of a judge and those of a tax-collector, they became supreme lords each in his own district, and monopolised the trade. Besides, many of the supervisors lacked administrative experience, were ignorant of the revenue affairs and did not know the language of the people. For these reasons they had to depend on the local zamindars, farmers, *naibs* or *amins*, who used every means to conceal relevant information from them.

The need to bring the supervisors under immediate and effective control led to the appointment in 1770 of the controlling councils of revenue, one each for Bengal and Bihar, and the controlling committee of revenue at Fort William. The councils of revenue were appointed with the same objects in view which had led to the appointment of the supervisors with a particular emphasis on the necessity to find information on the real state of the collections, that is to say, what rents were at that time actually paid by the *ryots* and what had been paid formerly. The functions of these two councils, set up at Murshidabad and Patna, were to be supervised by the President and the Council at Calcutta who for this purpose constituted themselves into a controlling committee of revenue. This arrangement had a bad start and lasted only for a short time. In 1770 Bengal was stricken by famine, which led the Court of Directors to announce their intention in the following year to assume direct responsibility for the government of Bengal Subah. In 1772, the first year of Warren Hastings' administration, the councils of Murshidabad and Patna were withdrawn and the supervisors in the district, now styled collectors and assisted by Indian *Diwans*, were required to address all their correspondence relating to revenue matters directly to the controlling committee of revenue at Calcutta, which from 10 October 1772 came to be styled as the Board of Revenue.

Thus, during the period of seven years (1765–72), the Company's government had failed, partly due to its initial reluctance to assume responsibility and partly due to the corruption and incompetence of its servants, to establish a regular process for conducting the business of the revenue in the *Diwani* lands. There were in 1772 different agencies for the collection of land revenues in different parts of the province of Bengal. The zamindary lands of Calcutta and the 24 parganas, and the ceded districts of Burdwan, Midnapur and Chittagong, which at an earlier period, had been obtained by

special grant from the Nawab of Bengal, were superintended by the covenanted servants of the Company. The rest of the province seems to have been parcelled out among zamindars and farmers, who were first placed under the ineffective control of the district supervisors and later under the remote supervision of the provincial councils. The President and the Council had so far remained only indirectly concerned in the administration of the revenue. The central government had been weakened and the powers of supervisors and revenue councils increased. Capable men had run away to the lucrative stations in the provinces. At the Presidency, where the best assistance was required, the worst only could be had. The state of the administration of justice was most unsatisfactory, owing to the fact that criminal and civil justice were in different hands. The security of private property, which is the greatest encouragement to industry, was almost non-existent.

Hastings' reforms of 1772 and 1773 introduced into the Bengal Subah the main forms of the British administrative system. Power at all levels was vested in groups of persons and not in individuals. The central government consisted of the Governor and Council. Powerful central bodies like the Board of Revenue and the Committee of Circuit each consisted of more than three members. The three provinces were divided into six divisions each under a provincial council which consisted of a chief and four senior servants of the Company. In these central and provincial bodies the decisions were made by majority votes, the governor and the provincial chief each exercising a casting vote only. Each governing body was to function by rules and regulations and keep records of its proceedings. This system, on one hand, secured the people from the arbitrary rule of one man, on the other it prevented a conscientious governor like Hastings from attacking the vested interests of the Company's Servants.

The second feature of Hastings' reforms was the strengthening of the central government. The governor and council became directly responsible for the government of Bengal, Bihar and Orissa. All provincial governments were to report regularly to the central government. The governor and a few members of his council constituted themselves into the Committee of Circuit for directly settling the revenue of Bengal. The *Khalsa* was removed from Murshidabad to Calcutta. These measures tended to enhance the power of the central government.

In making the revenue settlement of Bengal for five years, which, incidentally, was a break from the past practice of annual settlement, the Committee of Circuit frequently resorted to public auctions. As a result, the old zamindars were in many places ousted by speculating and unprincipled adventurers. The highest bidders were impelled by motives of acquiring power and prestige or to outdo an enemy. Their bids were often much higher than they could possibly realize from the *ryots*. As a result, they became regular defaulters. The provincial councils would confine them in jail until they paid their arrears. The defaulting farmers would borrow money from a merchant for their release. Then they would go back to their revenue farms and oppress the *ryots* in collection of rents from them. This practice was more in keeping with the traditional pattern of coercive government than with the principles of the British system. When the Supreme Court was established in 1774, it challenged the authority of the Company's servants to imprison anybody without bail or trial. It issued writs of *habeas corpus* on the application of those who were confined in jail without trial. The revenue of the Company was adversely affected but the coercive methods of administration were finally given up.

In one respect Hastings' revenue reforms failed to achieve the main objective. The vital information regarding the rents actually paid by the *ryots* to the farmer or zamindar and the real value of the lands held by the *ryots*, could not be obtained. Nor was this information obtained in the succeeding period even at the time when Lord Cornwallis made the permanent settlement. The main reasons were the ignorance of the Company's servants about the details of revenue administration and lack of any direct contact between them and the *ryots*. By withdrawing the collectors from the districts in 1773 and leaving the district administration in the hands of the Indian *Diwans*, Hastings' government snapped the direct link which had been developing since 1769 between the English collectors and the *ryots*. The roots of the Company's government did not go beyond the provincial headquarters.

Bengal Society

Bengal society in the eighteenth century consisted mainly of Hindus and Muslims with a sprinkling of Europeans who lived in their factories and forts. The growth of the Muhammadan population in Bengal may be traced back to the thirteenth century when

the first Muhammadan invasion of the province took place. Since then the Hindus and Muhammadans had lived side by side and had been, during the course of centuries, influenced by each other's cultures. The Muslim Nawabs, for example, observed the Hindu festival of *Holi*.[1] The Hindi poem *Padmavat* had been translated into Bengali by a Muhammadan poet, Alwal.[2] The author of *Suir-ul-Mutaqherin* mentions that Mir Jafar, while on his death bed, drank a few drops of water which had been poured in libation over a Hindu idol.[3] The principles of Hindu astrology were understood and observed by the Muslims. Some of the Nawabs, for example, started on their journey or undertook expeditions at auspicious moments. This interchange of ideas and customs had long ago led to the evolution of a common god, *Satya Pira*, worshipped by Hindus and Muhammadans alike.[4]

Though the Hindus and Muslims lived harmoniously in villages and towns and together observed certain customs and festivals they maintained their separate entities in other aspects of their lives. The Hindus were a most tolerant people, but their caste-system had made them as socially exclusive as they were communally tolerant. As a result there were no inter-dining and inter-marriage between the Hindus and Muslims. Though the Islamic criminal law, being the law of the ruling community, applied to the Hindus, in matters of civil law—inheritance and succession—the Hindus were governed by their own law of the *Shastras* and the Muslims by the *Shariat*. There was less harmony between the upper classes of both communities. The Hindu and Muslim courtiers of the Nawab frequently intrigued against each other.[5] The Hindu capitalist class—the *bania*—had an inherent hatred of Muslim rule. The interests of this class were bound up with those of the European merchants. The rise of this class in the seventeenth century had been caused by a change in the nature of India's oceanic trade.[6] In the sixteenth century this trade was mainly in spices, hence it did not affect India. But in the seventeenth century India's manufactured goods—calicoes, muslins, and commercial crops like mustard seed and

[1] *Muzzaffarnama*. 86a-86b, 123b.
[2] Sen, *History of Bengali Language and Literature*, 794-95.
[3] *Suir-ul-Mutaqherin*, Vol. II, 558.
[4] Datta, *Studies in the History of Bengal Subah*, Vol. I, 96.
[5] Orme, *History of the Military Transactions*, Vol. II, 53.
[6] Panikkar, *Asia and Western Dominance*, 77-78.

hemp—became the main items of demand. The European traders bought these goods from India and sold them to the South Eastern islanders for spices. The Hindu merchant class, particularly in Bengal, profited by this trade and, as a result, became a powerful class in the seventeenth century. When the Muslim power in Bengal declined after the death of Aliverdi Khan, the *banians* of Bengal deserted their Muslim masters and supported the English. The weak and unscrupulous Nawabs had, on one hand, frequently squeezed them of their savings and, on the other, had failed to provide minimum security for their trade and commerce. Like the Hindu *ryots*, the Hindu merchants had become apathetic towards their Indian rulers.

The British population of Bengal could be divided into three groups. The first group consisted of the servants of the East India Company who lived at the Company's headquarters at Calcutta and in the subordinate factories. In this group may be included the Company's army which lived either in cantonments or in camp. In cantonments the troops lived in barracks and the officers in bungalows. The second group of the British population consisted of free merchants. They were private merchants from Britain who were allowed by the Court of Directors to trade in India. They were subject to all those restrictions to which the servants of the Company were subjected in their private trade. They lived in Calcutta and in the provincial towns and enjoyed the protection of the Company. The third group consisted of missionaries and surgeons, the only representatives of the professions.

Judicial Condition of Bengal—The Rule of Might

Justice and the police were the two weak points in the Mughal system, which was extended to Bengal in 1586–87. In any society the administration of criminal and civil law is intimately connected with the police and revenue organizations respectively. The criminal courts would become ineffective without a strong police force to detect crimes and criminals. The civil courts would be likewise affected if the laws and regulations determining the enjoyment of or succession to and inheritance of property are uncertain, unascertainable or vague. The Mughal government was primarily military in nature. Its main functions were to guard the empire against foreign invasions and internal rebellions. These functions kept the emperor and his generals occupied for rebellions broke

out as frequently as they were suppressed. It was more vital a function of the government to apprehend a refractory Raja or an absconding claimant to the throne than to catch a murderer or thief. It was likewise considered more necessary to raise sufficient revenue from the *ryots* for the maintenance of the army than to secure the property rights of the people against violation by public servants or private individuals. The government framed and enforced only such rules and regulations which determined the relationship between the state and the citizens. There was no development in the laws and organizations that determined and regulated the relationship of citizens towards each other. The relationship of the citizens *inter se* continued to be regulated by their village councils, the Brahmans and Qazis. The Brahmans would expound and interpret the law of the *Shastras* for the Hindus and the Qazi would enforce the Islamic law among the Muslims. The village system worked satisfactorily so long as the Mughals were able to maintain a general state of order and peace in the empire. But after the death of Aurangzeb, when the imperial authority began to decline, lawlessness broke out in many provinces of the empire. Bengal became virtually independent of the empire in 1713, but it continued to enjoy order and peace until 1739, during the administration of Murshid Kuli Khan and his successor. From then onwards the government of the Nawabs steadily deteriorated. Starting from 1739 the ten years of successive Maratha raids made the government impoverished and unstable. The internal administration of the Subah went into a complete state of disorder during the nine years which intervened between the battle of Plassey in 1757 and the acquisition of Diwani in 1765.

Under the Company until to 1772, justice in the province of Bengal was administered by the country courts, and in the town of Calcutta by the courts erected from time to time by the British Crown and the Company. The traditional country judicatures had fallen into desuetude although they existed, at least in name, at Murshidabad, the seat of the Nawab's government. The Nawab or the *Nazim* was the supreme magistrate of the province and he presided personally in the trial of capital offences, and held a court every Sunday.[1] The Diwan, who was the judge of all civil and revenue cases, seldom exercised his authority in person. His deputy,

[1] H. P., Add. MSS. 29076, Letter of the Committee of Circuit to the Council, 15 August, 1772, 114-21. Also, Secret Consult., 1772, R. A., Vol. 19, 370-82.

the *Daroga Adalat Diwani*, acted for him. The deputy of the *Nazim*, the *Daroga Adalat Al Aaba*, decided petty criminal cases. He also seems to have assumed jurisdiction over civil cases. Thus, the powers and functions of these two deputies overlapped. The Qazi decided all disputes among the Muslims relating to inheritance and succession to property. Since these matters were strictly governed by the Islamic laws the Qazi was supposed to be learned in them. He was assisted by another officer called the *Mufti*, who expounded the law.

These were the three higher courts at Murshidabad. There were no regular subordinate courts at district and sub-divisional levels. Outside Murshidabad in the Nawab's territories, every man who had the power of compelling others to submit to his decisions exercised the functions of a judge.[1] The zamindar or Raja of a district exercised both civil and criminal powers. He inflicted all kinds of punishment except capital for which he had to secure the approval of the Nawab. Capital punishment, however, was rarely inflicted during this period. It had become customary to pay fines to escape corporal punishment. The zamindar's emoluments consisted of fines realized in criminal cases. His fee in civil cases was a fourth or fifth share of whatever amount was recovered in the court. The zamindars "generally lay under the influence of interest, and often under that of corruptions; and that the interposition of government, from motives of favour or displeasure, was another frequent cause of the perversion of justice."[2]

This system of the administration of justice which prevailed in Bengal at the time of the acquisition of the *Diwani* by the Company in 1765, was inadequate, irregular and corrupt. The greatest defect of the system was the want of subordinate jurisdiction. There was no proper gradation of courts and the powers and jurisdictions of the existing courts were ill-defined and overlapping. Even in the days of the great Mughal emperors there were no lower courts under the provincial Qazi.[3] The Qazi had lost his earlier independence and dignity and now functioned under the control of the executive power.[4] In fact, the downfall of the Mughal empire was in sight when the emperors were no longer able to uphold individual rights or to do justice between man and man, and when their sub-

[1] H.M S 352, 37.
[2] 7th Report of the Committee of Secrecy, 1773, 323-30.
[3] Sarkar, *Mughal Administration*, 110-16.
[4] Ahmad, *Administration of justice in Medieval India*, 275-81.

ordinates became more powerful than the decrees of the courts. None of the country courts maintained a record of its proceedings. As a result an appeal to the higher courts at Murshidabad from the decision of a zamindar's court always involved a fresh trial. In fact, there existed no laws regulating appeals and trials. The parties were not represented by the counsels. They were directly examined by the judge. The judge was bound by no precedent, not even by his own reason, for he was not required to explain how he weighed the evidence and why he arrived at a certain conclusion. The judges were paid no salary. Since their emoluments consisted of fines and fees, they were open to bribery and very likely to strike a corrupt bargain with the highest bidder. Lastly, the Hindus, who formed the majority of the population, were not only excluded from any share in the administration of justice but also no special provision was made to administer Hindu civil law to them.

Owing to all these drawbacks and corruption in the adminstration of justice, the people were most reluctant to bring their disputes to the country courts. This involved not only a long journey but also uncertainty about a fair trial. They, therefore, referred their disputes either to mutually chosen arbitrators or to a village *Panchayat*. *Panchayats* had functioned voluntarily in Indian villages since ancient times, but they were very defective. Unlike the modern jury system, the members of the *Panchayat* were not regular in their meetings, they possessed no power to compel the attendance of the witnesses and they had no judge to preside at their meetings and direct their proceedings.[1] Being non-official organizations, the village councils could not get the state's support to enforce their decisions. In many cases, therefore, the Hindus were left to themselves to assert their rights against each other and the government's servants. They either resorted to private force or appealed to the religious scruples of their adversaries. A Brahman, for example, by threatening his own destruction could compel his God-fearing adversary to compliance. He would go on hunger strike (*dharna*) in front of his adversary's house.[2] His adversary was bound to lose his caste in this world and his place in the other world if a holy Brahman died of starvation at his doorstep. *Dharna* could be practised by non-Brahmans as well. Another method of compelling an adversary

[1] Report, Select Committee, 1831, Appendix 39, Ram Mohan Roy's evidence on the judicial system of India, 716-41.

[2] Tennant, *Thoughts on the effects of the British Government on the state of India*, 150.

to compliance was *Koor*, which literally means a pile of wood, prepared for conflagration. Upon this pile a Hindu would place something holy, likely to arouse pity and fear in the heart of his adversary, like a cow or an aged woman. He would then threaten his adversary to set fire to the pile unless he complied. Sometimes *Koor* was practised to intimidate the government's revenue collectors and to prevent them from realising excessive rents.

On the acquisition of Diwani in 1765 the Company appointed Francis Sykes as the first resident at Murshidabad.[1] He appears to have been shocked at the chaotic state of the administration of justice in the provinces and proposed the establishment of a high court of twelve judges at Murshidabad and subordinate courts, each of six judges, for the provinces.[2] Very little is known about the working of these courts. Since the Company was until 1769 reluctant to assume responsibility in any branch of the administration, it is doubtful whether these courts received the necessary guidance and supervision of the resident. However, the court of Murshidabad existed, at least in name, when Becher succeeded Sykes in 1769.

It was on Becher's representation, that the supervisors were appointed in 1769. In regard to the administration of justice each district supervisor was required to enforce justice where the law demanded it, to check every composition by fine or mulct, and to recommend arbitration in disputes over property. He was further required to keep regular registers of "all causes and determinations".

Though in 1769 the Company government of Bengal decided to assume certain responsibilities, yet it was cautious enough not to interfere and introduce any vital changes in the existing system. The supervisors, on the one hand, were required to restore law and order in the districts, on the other, they were warned not to pursue any vigorous reforms. Even in their limited sphere of activities they could not achieve much for not only were they ignorant, but most of them were more inclined to exploit their position in the furtherance of their private trade than to establish direct contact

[1] Writing to his sister on 30 September, 1771, Richard Barwell remarked: "Sykes whose poverty of mind and richness of purse renders him an apt instrument to advance the purposes of Ambition." Sykes was later appointed governor of Madras and on his return to England he first became an M.P. and then a baronet. Barwell MSS. Letter Book Vol. 21, 4.

[2] 7th Report, Committee of Secrecy, 1773, 326.

with the people and study the ways of improving their condition. Those who were zealous and conscientious found most of their time and attention taken up by important matters of revenue and trade. The administration of justice remained last in the order of priority. The insufficiency of the police forces and want of adequate courts at all levels of administration were additional handicaps in the administration of justice.

In spite of all these limitations some of the supervisors endeavoured to introduce some useful reforms in their respective districts. In the Rajshahi district, for example, there was a clamour against the corruption and oppression of the Qazis. They would not inflict any corporal punishment for any crime. Instead they would punish all offences by exorbitant fines the value of which they determined themselves. Rous, who was the supervisor of the district, took immediate notice of this and published an order in 1770 requiring every Qazi to register his *sanad* and to give regular accounts of the fines and fees realised by him. The supervisor of Dinajpur, to take another example, attempted to establish inferior courts in his district. He divided his district into regions and appointed judicial officers to try petty cases in each region.[1]

These sporadic reforms, however, failed to improve the general condition of the country. The famine of 1769–70 made conditions more chaotic. It sapped the economic life of Bengal, ruined the *ryots* and forced some of them into a life of crime. Bands of *sannyasies* and *fakirs*, who moved in groups of thousands, plundered the villages and exacted contributions from the people. A state of lawlessness became widespread in Bengal.

This calamity made the Directors of the Company realise that the system of double government had failed. Nothing short of a complete assumption of responsibility by the Company could save Bengal from ruin. Accordingly in their dispatch of 28 August 1771, the Court of Directors declared their determination to stand forth as *Diwan* of the *Subah*. This in essence meant that the Company was no longer to content itself with the mere supervision of the administration, which since 1765 had been in the hand of Indians. From now on the Company was to administer the provinces directly and its servants were to act as revenue collectors, administrators and judges.

With twenty-two years of Indian service to his credit, Warren

[1] *Ibid.*, 328.

Hastings was most suited to direct this task. In the sphere of the administration of justice his reforms were intended to supply the most obvious shortcomings in the existing system, viz. the establishment of a network of subordinate courts in the provinces and the replacement of incompetent and corrupt Indian judicial officers by the Company's servants.

By the Regulations of 1772 there were established in each district two courts of judicature, the *Mufassal Diwani Adalat* for the cognizance of civil cases, and the *Faujdari Adalat* for the trial of criminal cases; the British collector and the Indian *Diwan* were to preside in the former, and the district Qazi and Mufti with two Maulavies to preside in the latter.[1] The district civil court was given jurisdiction over all matters of property, with the exception of the right of succession to zamindaries and talukdaries which was to be determined by the President and the Council. The district criminal court was to try all criminal cases; in capital cases the opinion of the court, with the evidences and defence of the prisoner, was to be transmitted to the *Sadar Nizamat Adalat* (Supreme Criminal Court), and having obtained their confirmation, was to be ultimately referred to the Nawab for his sentence.

Superior courts were at the same time established at Calcutta and Murshidabad. These were the *Sadar Diwani Adalat*, which was composed of Governor and Council and which received and heard appeals from the district civil courts; and the *Sadar Nizamat Adalat* which was composed of the Daroga, Chief Qazi, Chief Mufti and three Maulavies, and which revised the proceedings of the district criminal courts. A similar control over the proceedings of the latter court was to be vested in the Chief and Council of Murshidabad, as the collectors were authorised to exercise over the provincial criminal courts.

Thus, we find that the Regulations of 1772 abolished the old zamindari civil and criminal courts and erected in their place two separate courts to administer civil and criminal justice independently. Until the abolition of the system of collectorships on 23 November, 1773, there were as many courts of justice as collectors; but on the recall of these the only courts of civil judicature remaining were (excepting those of Chittagong and Bhagalpur) the courts annexed to the provincial councils at the six divisional headquarters, viz.

[1] H.P. Add. 29076, 106-14. Also H.M.S. Vol. 584, History of the *Adalats*, 1772-85, 115-38 and Secret. Consults. 1772, R.A. Vol. 19, 382-94.

Patna, Dinajpore, Murshidabad, Dacca, Burdwan and Calcutta. These were superintended in rotation by the members of the provincial council. In the districts or sub-divisions of the province, Naibs were appointed to collect revenue and to hold courts of *Diwani Adalat*; an appeal in all cases was allowed from their decision to the provincial *Diwani Adalat*.[1] An appeal from the decision of the provincial *Diwani Adalat* in a case, the subject matter of which valued more than rupees 1000, lay to the *Sadar Diwani Adalat* at Calcutta.

By the close of 1772, the country exchequer and the *Sadar Nizamat Adalat* had been removed from Murshidabad to Calcutta; the decisions of this court on the proceedings of the inferior courts were for some time transmitted to Murshidabad to obtain the Nawab's warrant; but because much delay took place, it was thought expedient to procure from the guardian of the Nawab a delegation of his authority to the Daroga of the Nizamat court, for which purpose, the great seal of the Nizamat was lodged with the Daroga.[2] By this measure the Bengal Government obtained entire control over this department, and were enabled both to revise the sentences of the officers of the *Nizamat Adalats*, and to correct the imperfections of the Muhammadan law by the warrant of the Nazim. In fact the Governor became the Superintendent of the Chief Criminal Court.[3]

In completing this picture of the judicial system we now turn to describe briefly the state of judicature existing in the settlement of Calcutta, which was partly derived from Indian practice, and partly established by British Royal Charters of Justice.

Until 1726, the courts of justice that existed in Calcutta were derived from the system of the Nawab's government and therefore similar to those that existed in the province at large. In 1698 the

[1] Colebrooke, *Supplement to the Digest*, 200-206. All trivial disputes relative to property, where the value did not exceed ten rupees, were to be decided by the principal renter of the sub-division whose decree was to be final.

[2] H.P. Add 29079; Extract of Consults., 23 Nov. 1773, 22-23.

[3] Hastings actively supervised the functions of the *Sadar Nizamat Adalat* until 14 April, 1774, when he relinquished his trust, feeling the duty of it too heavy to discharge. A confusion in the functions of the *Sadar Nizamat* Court continued till 18 October, 1775, when this Court was transferred to Murshidabad under the superintendence of Muhammad Reza Khan who had been appointed Naib-Nazim and in that capacity was entrusted with the administration of the criminal justice throughout theprov inces. (Proceedings of the Select Secret Committee, 18 October, 1775. Forrest, *Selections*, vol. II, 1-6.)

Company had secured from the *Subahdar* or Nawab of Bengal, the zamindari of the three adjacent villages of Calcutta, Sutanauti and Govindpur. These formed the first territorial possessions of the Company in Bengal.[1] In their capacity of zamindar of Calcutta the Company exercised criminal, civil, revenue and religious jurisdiction over the town and district of Calcutta. Thus, there were established in Calcutta, *Faujdari*, *Kachahri* and collector's courts. The criminal court was presided over by one person appointed by the Governor and Council and it continued to exercise concurrent jurisdiction with the Court of Oyer and Terminer when the latter was established by the Royal Charter of 1726. Several judges were appointed by the Governor and Council to sit by rotation in the civil court, which had jurisdiction over all Indians and in cases between an Indian and a European, where the latter was plaintiff; but in this case, the Indian might remove the cause into the Mayor's Court when the latter was established in 1726.[2] Appeal lay from the civil and criminal courts to the Governor and Council.

The collector, appointed by the Governor and Council sat as judge in the revenue court. He appointed revenue-judges for the inferior courts in the parganas. Appeals from the inferior revenue courts lay to the collector's court and from his judgement to the Governor and Council. Thus, we find that the Company's courts established in Calcutta, though modelled on the country courts, excelled the latter in their system of subordinate jurisdictions.

Under the Charters of 1726 and 1753 the following courts with different powers, had been established at Calcutta:

(1) Mayor's Court[3]:

This court consisted of Mayor and nine Aldermen, seven of whom

[1] In 1757, Nawab Mir Jafar on his accession to the throne of Murshidabad granted the 24 parganas to the Company. No further addition was made until 1760 when Mir Kasim assigned to the Company the three districts of Burdwan, Midnapur and Chittagong. The grant of *Diwani* in 1765 brought 24 districts under the civil administration of the Company. (5th Report, Select Committee, 1812, App. A, *Analysis of the Finances of Bengal* by J. Grant, 336.)

[2] 7th Report, Committee of Secrecy, 1773, 323-51. Before the establishment of Crown Mayor's Courts at the three presidencies in 1726, suits between British subjects at Fort William were referred to the Company's Mayor's Court at Fort St. George.

[3] *Bengal Past and Present*, Vol. VIII. Some Records relative to the Mayor's Court—1-39. The Company had established a Mayor's Court at Fort St. George

were to be British subjects. It had jurisdiction in all civil suits and an appeal from its decision lay to the Governor and Council and thence to the King and his Privy Council in cases involving sums above the amount of 1000 pagodas (Madras currency). The Charter of 1753 limited the jurisdiction of the Mayor's Court to the Europeans only and suits between Indians could be entertained only by the consent of the parties.[1] Under the Charter of 1726, the Mayor's Court had been made partly independent of executive control. On the death or removal of an Alderman the remaining Aldermen had been empowered to elect a successor from the principal inhabitants of the town.[2] But the Charter of 1753 vested the power of nominating an Alderman in the Governor and Council.

(2) Court of Oyer and Terminer and Gaol delivery:

The Governor and Council constituted a Court of Oyer and Terminer and Gaol delivery, for the trial of all offences, except high treason, committed within the town of Calcutta and within any of the factories. The Charter of 1726 had introduced trial by jury in all criminal cases in the sessions Court of Oyer and Terminer. Not only was there to be a petty jury of twelve for the actual trial, but the novelty in India of having a grand jury of twenty-four for preliminary finding of a 'true bill' was also introduced.[3]

(3) Justices of the Peace:

By the Charter of 1726 the Governor and Council had been constituted justices of the peace and authorised to hold Quarter Sessions.

(4) Court of Requests:

This Court was erected by the Charter of 1753 and was composed of not more than twenty-four of the principal inhabitants of the town, all to be appointed by the Governor and Council.[4] It entertained suits for the recovery of small debts.

These four were the Courts established by the Charters of 1726 and 1753. They functioned side by side with the Company's Courts which had been established in the town of Calcutta.

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in 1687. It functioned until 1727 when it was replaced by the Mayor's Court as erected by the Charter of 1726.

[1] Shaw, *Charters*, 258. [2] *Ibid.*, p. 232.

[3] Fawcett, *First Century of British Justice in India*, 217.

[4] Shaw: *Charters*, 275.

The Mayor's Court was the principal Court which functioned in Calcutta before the establishment of the Supreme Court in 1774. Commenting on the defects of the Mayor's Court in their seventh report, the Parliamentary Committee of Secrecy remarked that the Court was dependent on the Governor and Council, who had the power to remove the judges. The Court of Oyer and Terminer and Mayor's Court as constituted, could not be considered "as free and independent Judicatures, in any case where the Company is a party, or where any member of the Council is prosecuted on a criminal charge".[1]

Although these Courts, at least with respect to Europeans, were bound to judge according to the laws of England, yet the judges of these Courts were not required to be, and in fact had never been, persons educated in the knowledge of these laws by which they must decide. On the other hand, Sir Charles Fawcett who had the opportunity of looking into the registers of the Mayor's Courts, considered that these Courts were not as incompetent as they are generally believed to have been.[2] Though the Benches had no professional lawyer among them, they judged the causes before them with apparent fairness and in a sensible manner.

That they were not as sensible and fair as Fawcett believed them to have been is evident from the censures to which they were frequently subjected by the Court of Directors. Two complaints were made to the Court of Directors against the Mayor's Court of Calcutta, one by Whittall who had been attorney of the Court, from which post he had been dismissed by the Court; and the other by Jephson who complained of illegal and abusive exercise of the authority of the Mayor's Court, which had stopped him from proceeding to England, though he had secured the appropriate permission. The Court of Directors found that the complaints were valid and duly communicated to the government of Bengal their disapproval of the conduct of the judges of the Mayor's Court.[3] It is therefore, true that the judges of the Mayor's Court were the Company's mercantile servants—men with only slender legal attainments, and slight judicial training. The President and Council and the members of the Mayor's Courts were often brought into collision, "and

[1] 7th Report, Committee of Secrecy, 1773; 333.

[2] Fawcett, *First Century of British Justice in India*, 225.

[3] 7th Report, Committee of Secrecy, 332-33.

between the two, neither law nor justice was treated with much respect".[1]

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To sum up, there were no regular courts in the districts of Bengal before the Regulations of 1772; civil and criminal justice was irregularly and corruptly administered by the zamindars; an appeal from their decisions to the government at Murshidabad was a luxury which only the rich and influential could afford. Common men referred their cause to mutually chosen arbitrators or to the village *Panchayat.*

Under the Regulations of 1772, a division on clearer lines was maintained between civil and criminal jurisdiction, and two different systems of *Adalats* were established to administer civil and criminal justice. Since criminal administration was a function of the *Nizamat*, interference with the criminal courts was "an usurpation" on the part of the Company. However, the administration of criminal justice under the superintendence of the Company was bound to be more efficient and impartial than its administration under the nominal and 'never effective' superintendency of the Nizam. But the *Adalat* system suffered from some obvious defects. The judicial and executive power came to be vested in the same person or body of persons. These persons, the British servants of the Company, were corrupt and partial. Most of them had acquired notoriety for their corruption during the period before 1772. The settlement was suffering "under their oppression and tyranny".[2] They had no legal training; they knew nothing of the laws of Hindus and Muhammadans and few had any knowledge of Indian languages. Furthermore, their revenue and executive functions took much of their time, energy and zeal. Consequently they abandoned their judicial functions to the subordinate officers of the Court, who were still more incompetent to discharge such an important function.

THE PASSING OF THE REGULATING ACT AND THE ESTABLISHMENT OF THE SUPREME COURT

The first effective parliamentary intervention of 1773 in the

[1] Kaye, *Administration of E.I.C.*; p. 322.

[2] Richard Barwell to Anselm Beaumont, 1 January 1767, *Bengal Past and Present*, Vol. IX, Letter No. XLIX.

affairs of the East India Company was stimulated by many factors and conditioned and shaped by diverse interests.

Reports from India about the corruption and excesses of the Company's servants had been reaching the British public through various channels. India had become an El Dorado for young men in search of a fortune, and the Directors of the East India Company wielded a patronage of royal dimensions. The young servants of the Company, actuated by self-interest, when left to themselves after the departure of Clive from India in 1760, resorted to various oppressive methods to amass private fortunes. Nowhere in Europe, nowhere else perhaps in the world, were large fortunes so easily amassed.[1] Clive himself had gone out a penniless clerk; when he returned to England, at thirty-four, he had acquired a fortune of more than £40,000 a year, besides giving £50,000 to his relatives.[2] Yet he stood astonished at his own moderation when the Commons brought themselves to investigate his conduct.[3] However, during his second administration Clive did not fail to inform the Directors of the tyranny and oppression of their servants in India:

"In a country where money is plenty, where fear is the principle of government, and where your arms are ever victorious; in such a country, I say, it is no wonder that corruption should find its way to a spot so well prepared to receive it. It is no wonder that the best of riches should readily embrace the proffered means of its gratification, or that the instruments of your Power should avail themselves of their authority, and proceed even to Extortion, in those cases where simple corruption could not keep pace with their Rapacity".[4]

Among the various means by which the vast fortunes of the servants of the Company were accumulated was their private trade. They did not pay the transit duty and defied, displaced or intimidated all Indian officials, even the Nawab himself, if they tried to resist them.[5] They monopolised the trade in certain necessaries of life, like salt, and sold them at famine prices to a half starving Indian population.[6] They bought from Indians at the lowest price

[1] Lecky, *History of England*, Vol. III, 473.

[2] Malcolm, *Life of Lord Clive*, II, 187.

[3] Parl. Debates, 1773, Vol. 17, cols. 858-64.

[4] 3rd Report, Select Committee, 1773, Clive to Directors, 30 September 1765, 391-98.

[5] Mill, *History of British India*, Vol. III, 326-7.

[6] Leckey, *History of England*, Vol. III, 474; also Adolphus, *History of England*, Vol. I, 346-47.

and sold to them at the highest. After their return to England the British Nawabs, as the retired servants of the Company were called, by their wealth and ostentation, and by forcing themselves on English society, aroused the jealousy and dislike of the country gentry.[1]

The attention of the reading public in England had been drawn towards these abuses in the Company's administration of Indian territories, by the two editions of Alexander Dow's *History of Hindustan* and William Bolt's *Considerations on Indian Affairs*.[2] These authors, who had recently returned from India, were largely motivated by their personal prejudices against Clive in bringing to the notice of the public the prevailing corruption and abuses in the rank and file of the Company.[3]

These rumours and reports from India were gradually making the public mind keenly sensible of the enormity of the abuses in India, and it was felt that an Empire already exceeding in magnitude every European country except France and Russia, with a gross revenue of four million sterling should no longer be left uncontrolled by Parliament.[4] A conviction was rapidly growing that the whole system of governing a large country by a commercial company was radically and incurably false. The arguments on the subject were most clearly put by Adam Smith.[5] The first interest, he said, of the sovereign of a people is that its wealth should increase as much as possible. But a Company of merchants exercising sovereign power will always treat their character of sovereignty as a mere appendix to their character of merchants. As sovereigns it was the plain interest of the Company that their subjects should buy European goods as cheaply, and should sell their own goods as profitably, as possible. As merchants it was their interest to compel the Indians to buy what they supplied at the dearest rate, and sell to the Company their own goods at the cheapest rate. Furthermore, though the Company had a connection with India and a strong interest in not ruining it, its servants had gone out for a few years to make their fortunes, and when they left the country they were absolutely indifferent to its fate.

[1] Sutherland, *E.I.C.*, 147.

[2] Sutherland, *The E.I.C.*, 221. Bolt's was expelled from India by the order of the President and Council, (2nd Report, Select Committee., 1772, 271-79).

[3] Adolphus, *History of England*, Vol. I, 345.

[4] Malcolm, *Life of Clive*, III, pp. 313-16.

[5] Adam Smith, *Wealth of Nations*, Vol. II, Book IV, Chapter VII, 251-56.

The assumption of the Diwani by Clive, which was estimated by him to bring a net gain over £2,000,000 a year for the Company provided an irresistible attraction for the government to intervene in the affairs of a Company "apparently so rich and certainly so disorganized".[1] The nation was labouring under debt; George III wanted to redeem it from the Company's fund. The fear of French aggression in India had further aroused the concern of the Government about the Company's affairs.

The financial breakdown of the Company provided the immediate cause for the Government's intervention. Its debts were already estimated at more than six million sterling; it supported an army of about 30,000 men; it paid about one million sterling a year in the form of tributes, pensions, or compensation to the Emperor, the Nawab of Bengal and other great Indian personages.[2] The war with Hyder Ali (1767–69) had almost emptied the Company's treasury in India. To make the situation worse, the Company's proprietors, whose belief in the enormous wealth of India had greatly increased, raised their dividend in 1767 to 12½ per cent. The government introduced a bill in the House to prevent the Company from increasing its dividend without the consent of the Parliament. Terrified at the bill the Company offered to pay the government £400,000 a year. The House accepted the Company's offer but passed the bill. This additional financial liability further weakened the Company's financial position. A trade depression in Bengal, suddenly intensified by the disastrous famine of 1769–70, inevitably cut down the territorial revenues of the Company; its credit sank and the price of East India stock fell by 60 per cent.[3] The Chairman and Vice-Chairman of the Company were obliged to wait upon the minister to inform him that nothing short of a loan of at least one million pounds from the government could save the Company from ruin.

It fell to the government of Lord North to negotiate terms and conditions with the Company. The Company wanted a loan from the government, the government wanted to share the Company's immense new responsibilities and potential profits. North's ministry was stable but badly co-ordinated and "ill devised even by eighteenth-

[1] *Ibid.*: also letter of Clive to Directors, 30 September, 1765, 3rd Report, Select Committee, 394. Bengal and Bihar yielded in April, 1766 Rs. 33,025,968 to the Company. Dow, *History of Hindoostan*, Vol. II, Sec. VI, 93.

[2] *Annual Register*, 1773, 65. [3] Leckey, *History of England*, Vol. III, 484.

century standards for taking decisions or for tackling problems in time to prevent their becoming serious difficulties".[1] The sober administrators whose advice North took did not believe that the machinery of English government was strong enough to take over the responsibility of governing Bengal.[2] By appointing a Select, and then a Secret Committee in 1772, to report on various aspects of Indian affairs, the government betrayed its resolution to intervene in the Company's affairs. The problem that arose was as to the relationship between the state and the Company's territorial acquisitions. On this matter there were three main views—first to leave the power of the Company intact, second to take away from the Company all its political powers and vest them in the state, and third to create a partnership between the Company and the state in the exercise of political powers over India.[3] In view of the enormous abuses in the Company's administration of India, which had been brought to light by the reports of the Secret and Select Committees of the Parliament, the first course was impossible. The second course, which was supported by Chatham, would have been impolitic, partly because it would have violated the proprietary rights which had been granted to the Company by Charters and the Parliament, and partly because it might have been interpreted by the Indian and foreign powers as an open usurpation against the Mughal empire. The third course was therefore adopted.

On 18 May, 1773, Lord North introduced the Regulating Bill in the House. The three main objects of the Bill were to reform the constitution of the Company; to reform the Company's government in India, and to provide remedies against illegalities and oppressions committed by the Company's servants in India. It was in furtherance of the third object that the Bill proposed to extend to India the rule of law and to entrust its administration to a strong and independent Supreme Court. For this reason the power of appointing the judges of the Supreme Court was vested in the Crown. Had this power been shared with the Company as Burke, Fox and Dowdeswell wanted it to be, the court and its judges would have lost their independence and security, and consequently failed to discharge their functions.

The Regulating Act became law on 21 June, 1773. Those who supported the Act justly stressed its transitory character.[4] It was

[1] Sutherland, *E.I.C.*, 214. [2] *Ibid.*, 237. [3] Holdsworth, *A History of English Law*, Vol. XI, 162. [4] Writzman, *Hastings and Francis*, 15.

intended to bridge the gap between 1773 and the running out of the Company's Charter in 1780. Lord North said that "the Bill was necessary in every instance; that it carried with it animadversions on criminals, alterations of officers, regulations of various kinds; and that it was not a single regulation that would secure Bengal to this country: that if this Bill passed, though it did not perhaps afford a complete reformation, yet it began a correction of those evils, which future information might complete".[1]

Indeed, the Regulating Act was a half-measure, and disastrously ambiguous at many points.[2] The vagueness of the language of the Act arose from the fact that "its authors did not wish to face the problem with which they had to deal, and to grapple with its real difficulties."[3] For example, they wished that the King of England should act as the Sovereign of Bengal, but they did not wish to proclaim him to be so. Much has been said about the defects and the disastrous consequences of the Act. As the Act had to accommodate conflicting interests and contradictory principles, it could be nothing better than a half-measure, a compromise and a temporary settlement. The variety of sources from which its various provisions were drawn and the careful balance of interests which it incorporated is made clear by the difficulty of attributing the credit for it to any one man.[4] Perhaps the main object of the Act was "to establish a self-acting balance of powers, and to prevent abuses by a system of co-ordinate authorities".[5]

In this context we must briefly refer to the proposed composition, powers and jurisdiction of the Supreme Court.

The Chief Justice and three puisne judges of the Supreme Court, were to be barristers of England or Ireland of not less than five years standing. The judges were to be appointed by the Crown and to hold office during His Majesty's pleasure. The Chief Justice was to draw £ 8,000 per annum and the puisne judges £ 6,000 from the Company's treasury.

The Supreme Court was vested with five distinct jurisdictions: civil, criminal, equity, ecclesiastical and admiralty.[6] Over the town of Calcutta it was given a territorial jurisdiction; in the provinces

[1] Part. Debates, Vol. 17. Col. 903.

[2] Roberts, *British India*, 182. [3] Stephen, *Story of Nuncomar*, Vol. II, 129.

[4] Sutherland, *The E.I.C.*, 261. [5] Lyall, *Hastings*, 53.

[6] Morley, *Digest*, Vol. II, Charter of 1774, 549-87. Sections 12 to 22 and Sections 34, 36 and 38 of the Act relate to the Supreme Court. The Charter,

at large a personal jurisdiction over British subjects and servants of the Company. Over British subjects and persons directly or indirectly employed in the service of the Company, the Court was to exercise civil, criminal and admiralty jurisdiction. This jurisdiction was personal and therefore extended throughout the provinces. Over the inhabitants of Calcutta, whether Indians or Europeans, the Court was given a territorial jurisdiction in all matters, civil and criminal. Those Indians, who neither resided in Calcutta nor were employees of the Company, were not subject to the jurisdiction of the Court, except in civil matters for such transactions in which they had bound themselves by bond to be amenable to the Supreme Court. The Court was to exercise ecclesiastical jurisdiction only over the British subjects residing in the provinces. Thus, according to the jurisdiction of the Court, the population of the three provinces could be classified into four, British subjects, the servants of the Company, the inhabitants of Calcutta, and the Indians residing in the provinces at large.

Who were the British subjects? What law was the Supreme Court to administer? Neither the Act nor the Charter gave a precise answer. In the ninth report of the Select Committee, 1783, Burke said, "the defect in the institution seemed to be this; that no rule was laid down, either in the Act or the Charter, by which the Court was to judge. No descriptions of offenders, or species of delinquency were properly ascertained, according to the nature of the place, or to the prevalent mode of abuse.[1] Stephen, while expressing his doubts as to who were British subjects, argues that in one sense the whole population of Bengal, Bihar, and Orissa were British subjects, in another sense no one was a British subject who was not an Englishman born and in a third sense all the inhabitants of Calcutta might be regarded as British subjects.[2]

It may here be observed that though the Act and the Charter in general suffer from vague expressions, it is not hard to define who were British subjects. The answer to the first question is that those who were British born were intended by the Act and in the Charter to be considered as British subjects. The Act and the Charter use the following terms for different denominations of the population:

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which was granted on 26 March, 1774, fills in the details about the exercise of the powers of the Supreme Court.

[1] 9th Report, Select Committee, 1783, 6.

[2] Stephen, *Story of Nuncomar*, Vol. II, 126.

'Inhabitants of Calcutta'; 'British subjects'; 'persons in the service of the Company'; 'inhabitants of India residing in the provinces'. That all residents of Calcutta were not British subjects is evident from the difference maintained by Clause XIX of the Charter between the 'subjects of Great Britain' residing in Calcutta and the 'Indian population of Calcutta'. Only the British subjects resident in Calcutta were to serve on the jury in a criminal trial.[1] Likewise, the Indians residing in the provinces at large were not British subjects because unlike British subjects they were not amenable to the jurisdiction of the Court except by their own consent.[2] That all servants of the Company were not British subjects is evident from the 22nd Clause of the Charter which empowers the Supreme Court to exercise ecclesiastical jurisdiction only over the British subjects and not over the Indian servants of the Company. Throughout the Act and the Charter, a distinction is maintained between Indians in the service of the Company and British subjects. Thus we may reasonably conclude that the framers of the Act and the Charter used the term 'British subjects' for those born in Britain.

Though it is nowhere mentioned either in the Act or in the Charter which law the Court was to administer, by implication and analysis it can be reasonably said that it was expected to administer English law. The Charter of 1661 while conferring a general judicial authority upon the Governor and Council of each factory, authorised them to judge all persons belonging to the Company or living under them, in all causes civil and criminal according to the "laws of England" and to execute judgement accordingly.[3] The Mayor's Court and the Court of Oyer and Terminer, which were to be replaced by the Supreme Court, used to administer English law. The very composition, powers and jurisdictions of the Supreme Court were modelled on the lines of the King's Courts of England. There was to be the power of attachment, vested in the judges, the right of committal for contempt of Court, authority to issue writs, everything, in short, which appertained to, or was characteristic of the courts of law in England.[4] Besides, the intention of Parliament in creating the Supreme Court at Calcutta was to extend the advantages of English law to the people of India.

[1] Morley, *Digest*, Vol. II, Charter of 1774, 570.

[2] *Collections of Charters and Statutes*, Vol. II, Regulating Act, Cl. XVI, 149.

[3] Abstract of the 3rd Charter of E.I.C., 3 April, 1661, III.

[4] Gleig, *Hastings*, Vol. I, 450.

Controversies arise over different questions. Was it proper to administer English law in India? What part of common and statute law applied in India? Mill, for example, conceived that it was improper to extend to India through the instrumentality of the Supreme Court the arbitrary and technical rules of English law, which were ill-suited to the conditions in India.[1] We shall have occasion to discuss in the following chapters what part of English law applied in India. Here, it may be observed that the Charter of 1726 had for the first time extended to India all the statutes and common law existing at that time in England.[2] It may be further observed that Impey was associated with the drafting of the Charter of 1774, hence he knew its true intent and purpose.[3]

A serious defect of the Act was that it left undefined the relations between the council and the court. The governor-general and the council were exempt from the criminal jurisdiction of the court except in cases of treason and felony, and they were not liable to be arrested or imprisoned, but there is nothing else in the Act to exempt them from the responsibility to which all British subjects, and all servants of the Company were, on the narrowest possible construction of the Act, made subject.[4] There was nothing in the Act or Charter to prevent the judges from entertaining any suit or complaint against the governor-general and councillors and against the servants of the Company for acts done in the discharge of their executive, revenue or judicial functions. On this it may be reasonably said that the legislators did not intend to grant such exemptions to the Company's servants. If such an exemption were granted to the servants of the Company, the whole purpose of the Supreme Court would have been defeated. Without question, the chief purpose of the new Court was "to form a strong and solid security for the natives against the wrongs and oppressions of British subjects resident in Bengal".[5]

By the Charter of 1774, Elijah Impey was appointed the Chief Justice of the Supreme Court. The appointment was made by Lord

[1] Mill, *History of British India*, Vol. III, 502.

[2] Morley, *Administration of Justice*, 7.

[3] Impey, *Speech*, 26. The Charter was drawn by Impey and revised and settled by Thurlaw the attorney-general, Wedderburn the solicitor-general, De Gray, chief justice of the Common Pleas, and Bathurst the Lord Chancellor.

[4] Stephen, *Story of Nuncomar*, Vol. II, 129.

[5] 9th Report, Select Committee, 1783, 6.

Bathurst, the Chancellor, on the recommendation of Thurlow, who was then Attorney-General.[1] The three other judges, who were also appointed by Letters Patent, were Robert Chambers of the Middle Temple first, called to the Bar on 22 May, 1761, John Hyde of Lincoln's Inn, called to the Bar on 6 November, 1758, and Le Maistre of the Inner Temple, called to the Bar on 20 June, 1760.[2]

EARLY LIFE OF IMPEY AND HIS ARRIVAL IN INDIA

For the early life of Impey the chief source of information, though fragmentary, is the *Memoirs* written by his son, Barwell Impey. Elijah Impey was the third and youngest son of Elijah Impey, by his second wife, Martha Fraser.[3] He was born at Hammersmith, on 13 June, 1732; "his father like many of his predecessors, was a merchant, engaged in various traffic, but chiefly connected with the East India and South Sea trade."[4] Of Impey's two brothers, Michael, the eldest, succeeded to his father's business, and resided at Hammersmith till his death in 1794. The second, James, was educated at Westminster, and Christ Church, Oxford; he took the degree of M.D. and practised as a physician.[5] The family therefore was well established.

In his seventh year, Impey entered Westminster school. It was at Westminster that he developed the friendship with Warren Hastings, which continued till old age and death, "being never for a moment interrupted, except for a short interval at Calcutta".[6]

He left Westminster school in 1751, being admitted in December of that year as a pensioner of Trinity College, Cambridge; having on the preceding 8 December entered as a law student at Lincoln's Inn. In 1756 he won the junior Chancellor's medal.[7] On 3 October, 1757, he became Junior Fellow of Trinity College; and, on 4 July, 1759, he was made Senior Fellow.[8] In the meantime, on 23 November, 1756, he had been called to the Bar.[9] At the Bar he had become associated, among others, with Thurlow, Kenyon, Heath, Mansfield,

[1] Stephen, *Story of Nuncomar*, Vol. I, 3.

[2] H.M.S., Vol. 108, 311-29.

[3] Impey's family-tree. [4] Impey, *Memoirs*, 2. [5] He died at Naples in 1756.

[6] Impey, *Memoirs*, 6. Besides Hastings, the poet Cowper was one of his school fellows (Southy, *Life of Cowper*, 18).

[7] This medal is still in the possession of Lawrence Impey, the great-great-great grandson of Elijah Impey, who is living at Chilland, near Winchester.

[8] Impey, *Memoirs*, 10. [9] H.M.S., Vol. 108, 323.

Wallace and Dunning; with the last two he maintained a regular correspondence during his stay in India.

He started his practice on the Western Circuit, and was considered, as a pleader, second to none but Dunning.[1] In 1769, he distinguished himself in an assault case (Head versus Mullins and others), which was tried before Chief Justice Willes at the Exeter Assizes,[2] and from this period he was greatly sought as a Counsel. In 1772 he was appointed Counsel on behalf of the East India Company in the Lords, against a Bill to restrain the Company from sending out supervisors to India.[3]

When appointed as Chief Justice of the Supreme Court, he was forty-two years old, with seventeen years standing at the Bar. After receiving the honour of Knighthood from His Majesty George III, and leaving his two sons, Michael and John in England under the guardianship of his brother Michael, he, with his wife and attendants, sailed for India on board the *Anson*, with the other three judges, on 1 April, 1774.[4]

Of the three puisne judges, Chambers, a member of The Club, a friend of Dr. Johnson and Vinerian Professor of Law at Oxford, was the most distinguished.[5] From his later conduct in India we may say that he was a weak, though learned man. Hyde, who was very much attached to Chambers and had the highest opinion of his integrity, was himself "as high-minded and good-hearted a man as any in the world, yet he also had his failings and infirmities, being at times strangely petulant, and though possessed of good, plain sense, sometimes acted with so much impetuosity and intemperateness as to render that sense extremely doubtful".[6]

In the letters of Impey, Le Maistre and Hyde appear arrogant, abusive and violent.[7] To Thurlow, Impey wrote: "I have every-day more and more reason to be concerned at my having assisted in getting H. & L. [Hyde and Le Maistre] appointed judges. Hyde (in whom the need of the discretion which he had a little before he left England still remain) and Le Maistre are violent beyond

[1] Impey, *Memoirs* 12. In 1766-67 he had made an extensive tour of the Continent and after his return, on 18 January, 1768, married Mary, the daughter of Sir John Reade, Baronet of Shipton Court, Oxfordshire.

[2] *Ibid.* [3] Parl. Debates, Vol. 17, 1773, col. 675.

[4] H.M.S., Vol. 115, 17.

[5] *Memoirs of William Hickey*, Vol. III, 220-21. [6] *Ibid.*

[7] I.P., Vol. 16259, Impey to Dunning, 30 August, 1777, 82-83.

measure.... Hyde is an honest man, but a great coxcomb, his tongue cannot be kept still, and he has more pride and pomp than I have seen in the East".[1] Impey, it seems, was disappointed in the choice of Hyde and Le Maistre. When Le Maistre died on 4 November, 1777, Francis wrote in his journal—"Le Maistre dies at 6 p.m. this evening in great agonies. What a joy to the House of Impey".[2]

In the month of April the three new councillors, Philip Francis, General John Clavering and Colonel George Monson, embarked in the *Ashburnham* for India.[3] From the start the councillors felt jealous of the Chief Justice. Under the Charter, the Chief Justice was given precedence after the Governor-General, over the Supreme Councillors.[4] The new councillors viewed this precedence with jealousy and reproach.[5] Macrabie, who was travelling with Francis, wrote in the diary:

"The Chief Justice has stolen a march on the gentlemen of the Council in point of precedence, a mark of distinction which takes from the dignity of the latter without doing any credit, in my opinion, to the other honourable gentlemen."[6] Francis apprehended that "the natural conclusion in the mind of the native must be that the judicial is the first power and the judges the first persons in the state."[7]

In India, Warren Hastings could reasonably hope to have no trouble from the judges, for, his school friend, Impey, was their leader.[8] When Impey reached Madras he received a letter from Hastings congratulating him on his appointment:

[1] *Ibid.*, Impey to Thurlow, 30 August, 1777, 84-5.

[2] F.P., E. 23, Journal, 4 November, 1777.

[3] H.M.S., Vol. 115, 17. Philip Francis (1740-1818), the most able and bitter enemy of Hastings and Impey, was a clerk in the War Office before his appointment to the Indian Council; supposed to be the author of *Junius;* left India in 1780; member of parliament, 1784; knighted under the regency.

John Clavering (1722-77) had served as a professional soldier in Europe and the West Indies before his appointment to the Indian Council; knighted, 1776; died in India.

George Monson (1730-76), son of first baron Monson; a soldier distinguished in fighting at Pondicherry, 1760; aide-de-camp to George III, 1769, died in India.

[4] Morley, *Digest*, Vol. 2, Charter of 1774, 553.

[5] Francis to Ellis, 18 November, 1777, quoted in Weitzman, *Hastings and Francis*, 296. [6] Parkes, *Francis*, Vol. I, 12. [7] Busteed, Echoes, 59.

[8] Sulivan to Hastings, 16 January, 1774, quoted in Weitzman, *Hastings and Francis*, 212.

"I need not say how much I rejoice in the prospect of seeing so old a friend, independently of the public advantages which that friendship, cemented (if it required it) by the same connections, cannot fail to produce in the conduct of such affairs as are likely to fall to our respective or common lot.

"With respect to my own situation I shall say nothing till we meet, but that I shall expect from your friendship such assistance as the peculiar circumstances of my new office and connections will enable you effectually to afford me for the prevention and removal of the embarrassments which I fear I am unavoidably to meet with."[1]

In reply to the above letter of Hastings, Impey expressed his inclination to co-operate entirely with him independently of any orders or instructions he might have received to that purpose.[2]

The judges and the councillors landed at Chandpal Ghat of Calcutta and were officially welcomed by Hastings on 19 October, 1774.[3]

[1] Gleig, *Hastings*, Vol. I, Hastings to Impey, 24 August, 1774, 453.
[2] H.P., Add. 29135, 417.
[3] Cotton—*Calcutta*—104; Busteed, *Echoes*, 60.

CHAPTER II

IMPEY AND NANDKUMAR: THE CONSPIRACY CASE 1775

THE EARLY CONFLICTS BETWEEN THE COURT AND THE COUNCIL: OCTOBER, 1774 – MARCH, 1775

Mutual distrust, jealousy and ambition lay at the root of the early conflicts that ensued, on one hand, between the judges and the new councillors and, on the other, between the new and the old councillors.

In the beginning, the new councillors wanted to assume to themselves and to deprive Hastings and Barwell of real powers in the government and also to show the world that "their arrival saved Bengal from impending ruin".[1] Later it was their ambition to secure the removal of Hastings and the appointment, in his place, of one of themselves as Governor-General.[2] From the start, therefore, the Council was divided between the majority and minority group, the latter consisting of the Governor-General and Barwell. The new councillors considered themselves as the representatives of the British government deputed to act generally for the British nation, "in contradistinction to Mr. Hastings and Mr. Barwell who may be supposed to act for the Company".[3]

Being so keenly conscious of their superior power and position,

[1] V. P., George Vansittart to John Caillaud, 4 January, 1775, European Letter book, 51-53.

[2] See the letter of Col. Monson to Rockingham, 3 August, 1775, Rockingham Papers, RI. 1583.

[3] Warren Hastings (1732-1818) had come to India in 1750 and since then had served E.I.C. in various positions until 1772 when he was appointed president of E.I.C. Council in Bengal. In 1773, when he was under the Regulating Act appointed Governor-General of India, he was about forty one, having served in India for over twenty years. Richard Barwell, born in India on 8 October, 1741, was the son of William Barwell who had once been the governor at Fort William from 1748-1749. He started his career in India in 1758 as a writer and since then served E.I.C. in various positions and at various places (Malda, Bettieh, Murshidabad, Calcutta) until 1774 when he was appointed one of the members of the Supreme Council. (Barwell's Résumé of his career in India in his letter to L. Sulivan, 15 November, 1772, Letter Book of Barwell, Vol. 2.)

the new councillors were prone to take offence at any act which did not sufficiently publicise their commission among the Indians. When the troops were not turned out to receive Clavering on his arrival at Calcutta, he suspected that Hastings was unwilling "to acknowledge him commander in chief". Although George Vansittart later explained to him that since he had landed not in the Fort but in the town and the troops had not been turned out on similar occasions to welcome Henry Vansittart or Lord Clive, Clavering refused to be pacified.[1] Some Indians believed, or were led to believe that these three men "had authority to act both on the part of the King, and on the part of the Company, as Directors of all the transactions of the committee, and as enquirers into the Governor's conduct and that of Barwell".[2] Barwell assured his sister Mary, and his patron Sulivan that he would support Hastings in spite of the fact that there had been occasions of difference between them, which proceeded wholly from the jealousy of Hastings' temper "which cannot yield to another the least share of reputation that might be derived in the conduct of his government".[3] Thus, at its inception the government stood divided and accordingly, the servants of the Company were grouped into two opposite camps. Accusation and counter-accusation began to appear in the official files of the Company.

The hostility of the new councillors to the Supreme Court originated with the inception of the latter; it was founded partly on jealousy, partly on principle, but characteristically it degenerated into a matter of personal rancour.[4] Francis wrote in his journal that Clavering, inflamed by Joseph Fawke, was for immediate war with the judges, and a declaration against the establishment of the Supreme Court. But he resisted his "importunities to attack the Supreme Court" until be thought there was public ground for taking such a step.[5]

The judges, on the other hand, were equally conscious of their superior dignity and power which originated from the Crown and were, as such, given to resent and oppose any encroachments upon their independence by the Council.

The early conflicts took shape on such matters as the provision

[1] V. P., Vansittart to Palk, 30 November, 1774, European Letter Book, 37.

[2] *Seir Mutagherin*, Vol. III, 71-72.

[3] Barwell to Mary Barwell, 30 November, 1774, Letter No. 377, *Bengal Past and Present*, Vol. XII, 71-72.

[4] Weitzman, *Hastings and Francis*, 40. [5] Parks, *Francis*, pp. 56-57.

of a Court-building, the mode of payment of the salaries of the judges, and the salaries and fees of the officers of the Court.

The Directors had instructed the Governor-General and council to provide a house for the Court and to pay from the treasury the salaries of the judges and the officers of the Court, though in approving the latter they were to observe the "strictest frugality".[1]

On the requisition of the judges for a spacious Court house, the Council offered them the old building in which the Mayor's Court had been sitting.[2] This house had not sufficient apartments for the Court (the Court said that it needed at least 21 rooms), many apartments in it needed repair, and a few apartments were occupied by private persons.[3] The judges reluctantly agreed to use the house as a Court building until a new house was built for that purpose.

As regards the mode of payment of the salaries of the judges, the Council, taking into account the frequent fluctuations in the rate of exchange, calculated on an average exchange rate of two shillings per sicca rupee, and offered to pay the salaries of the judges at that rate. The judges did not agree and asked to be paid in silver and on an alternative mode of payment which the Council refused to accept. The Council referred the whole matter to the Directors for decision; in the meantime the judges were to receive their salaries at the rate of 80,000 current rupees for £6,000. The judges felt obliged to assent, provisionally, to the proposal of the Council, also declaring their resolution not to be bound by the determination of the Council for all time.[4]

As regards the salaries and fees of the officers of the Supreme Court, the judges submitted to the Council for their approval a table of salaries and fees. The Council hurt the pride and dignity of the judges, by approving the table for only one year, and withholding their assent to the proposed salaries until they were furnished with an account of fees actually received by the officers.[5] The judges strongly protested against this observing that the Regulating Act gave the Council "a simple power of allowing or disallowing without any limitation or restriction whatsoever".[6]

[1] I.P. Instructions of the Court of Directors to G. G. & C., Letter Book, Vol. 16265, 1-2.

[2] *Ibid.*, Council to Court, 21 November, 1774, 4. Probably this house was founded in 1731 as a charity school house. It later became the home, first of the Mayor's Court and then for a time, of the Supreme Court. (*Bengal Past and Present*, Vol. VIII, 182). [3] *Ibid.*, 6-8. [4] *Ibid.*, 10. [5] *Ibid.*, 14-15. [6] *Ibid.*, 15-21.

As regards the Council's decision to withhold their approval of the proposed salaries, until furnished with an actual account of fees received by the officers of the Court, the judges observed that it was contrary to the sense of the Legislature and the order of the Court of Directors. They denied any authority in the Council to ask the Court's officers to furnish information about the fees received by them. The judges observed that it was natural that the Court's officers should pay the most ready obedience to the judges and depend on them, not on the councillors, for their daily support:

"What effect the Government of a country having in their power the officers of a court of justice instituted to control the arbitrary exertion of power must have in the common sense of Mankind is too obvious to be insisted upon; an observation which had it occurred to your Board we are very sure would have prevented a proposal which we are unanimously of the opinion it would be a breach of Duty in us to accept."[1]

In conclusion the judges asked the Council either to disapprove or approve the 'salary-list'.

After receiving the Judges' representation, the Council approved the list.[2]

To sum up, the early conflicts between the Court and the Council were caused by the councillors' attempts to dominate the Court. The judges, who were acutely conscious of their independence and powers, showed their readiness to fight every issue rather than suffer even a slight interference of the Council in their affairs. It was in this early stage of growing bitterness between the Court and the Council that Nandkumar came to be tried in the Supreme Court for forgery.

The trial and execution of Nandkumar was a decisive event both in the history of the Supreme Court and the career of Impey. The trial was a culmination of the Court's early struggles for independence. It involved a conflict between the traditional and English system of administration of justice. By refusing to take into account the status, caste, power or influence of Maharaja Nandkumar the judges applied the first principle of English law—equality of all before the law. This event, therefore, marked a distinct break from the traditional pattern and brought in a new era in the administration of justice. The trial also affected the later career of Impey

[1] *Ibid.*, 19. [2] *Ibid.*, 22-23.

and Hastings for both on their return to England were charged by the House of Commons for having conspired in the destruction of Nandkumar. Although the House acquitted Impey in 1788, later the same charges were revived by critics and historians like Mill and Macaulay. Impey was accused of having conspired with Hastings to take away the life of Nandkumar, who had preferred charges of corruption against Hastings in the Supreme Council. In this conspiracy, Impey was alleged to have illegally and unjustly tried Nandkumar for forgery and condemned him to death.

In order, therefore, to understand the significance of the trial and to establish whether the charges against Impey were well-founded, it is necessary to describe in a little detail the circumstances leading to the trial and the various matters involved. Thus, before describing the commitment and trial of Nandkumar for forgery, we shall first examine Nandkumar's accusations against Hastings of bribery and corruption and then Hastings' prosecution of Nandkumar in the Supreme Court for conspiracy.

NANDKUMAR'S ACCUSATION OF HASTINGS, MARCH, 1775

To understand this case, it is necessary first to give a skeleton sketch of Nandkumar's past career. Little is known about his early life.[1] He was the son of Padmavallabha Roy, who was an amil (a revenue officer). During the rule of Aliverdi Khan (1740-56), Nandkumar was appointed an amil. He was soon found guilty of malversation and confined until his father paid from his own money the balance due to the Nawab's government. From then until 1756, Nandkumar does not appear to have held any lucrative employment. In 1756, when Siraj-ud-daulah became the Nawab of Bengal, Nandkumar was appointed to the Diwanship of Hoogli. In 1757 he helped the English against the Nawab and as a result became so intimate with Clive that he was nicknamed the 'Black Colonel'. Through Clive's recommendation he again became the Diwan of Hoogli.

[1] The accounts of his life written in English are scanty and are based on Barwell's account which was written after the execution of Nandkumar and sent to a friend for circulation in England. (Enclosure to Barwell's letter to Alexander, 9 August, 1775, *Bengal Past and Present*, Vol. XIII, No. 454, 101-8). Barwell's account was ascertained by enquiries from those who had been long conversant with the affairs of the Kingdom and by reference to the records of the Council.

In 1758 he was considered by the Calcutta Council to be a very capable person, loyal to the Company, and, therefore, was appointed to a Tahsildarship of the Company.[1] His business was to collect the Company's revenues from the Rajas and Zamindars.

He appears to have remained in this employment until 1760 when his patron, Mir Jafar, was deposed and Kasim Ali raised to the Nawabship of Bengal. Nandkumar remained loyal to Mir Jafar and resided with him in Calcutta, intriguing at the same time to bring him again into power. It was at this time that Nandkumar was confined by the President and the Council on a charge of forging certain traitorous letters with an intent to ruin his enemies, Ramchurn and others.[2] Hastings, who was at that time a member of the Council, was appointed to inquire into the matter and found that the charges were well-founded.[3] Nandkumar then turned towards the French and started intriguing with them against the English Company.[4]

In 1763, Kasim Ali was replaced by Mir Jafar and on the latter's request, Nandkumar was released from his confinement. Nandkumar joined Mir Jafar in his war against Kasim Ali and after the defeat of Kasim Ali he secured from the Mughal Emperor the title of Maharaja, which was later conferred upon him by Mir Jafar.[5]

On 16 July, 1764, under the orders of General Carnac, an enquiry was held at Patna into the conduct of Nandkumar.[6] Nandkumar had written a letter to Raja Balwant Singh of Banaras, who had fought under the Nawab of Oudh at the battles of Patna and Buxar, advising him against an alliance with the English. Fullerton, who was on the enquiry committee, knew of this letter but did not mention it during the course of the enquiry, because, as he later disclosed, Carnac did not want Nandkumar to be convicted. The enquiry proved inconclusive.

The death of Mir Jafar in 1765 at once reduced Nandkumar to

[1] Long, *Selections from Unpublished Records*, 154-5.

[2] Forest, *Selections*, Vol. 1, xxxix; also Wheeler, *Records in the Foreign Dept.*, 15-17.

[3] Secret Proceedings relating to Nandkumar, 1762, R. 168, Vols. 16, 17 and 18.

[4] Nandkumar's petition on his imprisonment; Long, *Selections from Unpublished Records*, No. 641, 310.

[5] Enclosure to Barwell's letter to Alexander, 9 August, 1775, *Bengal Past and Present*, Vol. XIII, No. 454, 101-8; also Busteed, *Echoes*, 67.

[6] Crawford, *History of the Indian Medical Service*, Vol. I, 192-6.

hard straits. The Company did not trust him. He had been "guilty of carrying on correspondences with the Country Powers hurtful to the Company's interests, and instrumental in conveying letters between the Shahzada and the French Governor-General of Pondicherry". He was now considered, by the Company, to be a man of such wicked and turbulent disposition that no harmony could subsist in a society where he had the opportunity of interfering. He was removed from his office and brought down to Calcutta under guard. Muhammad Reza Khan was appointed in his place as Naib to the new Nawab.

Before his departure for England in 1764, Henry Vansittart had written an account of Nandkumar's misdemeanours and bad qualities and handed it to his brother, George Vansittart to be produced in the Council after Clive's arrival.[1] Nandkumar might have expected to gain from his old intimacy with Clive. But he was disappointed. After his arrival in India in 1765, Clive confirmed the appointment of Reza Khan as the principal minister of the Nawab and appointed Raja Doorlabh Ram and Jagat Seth to assist Reza Khan in the government. Clive was determined to banish Nandkumar to Chittagong but on Nubkissen's suggestion Nandkumar was allowed to stay in Calcutta under "strict surveillance". Nubkissen, who had loyally served the Company in various positions since 1750, was now appointed as the Diwan to the Company and Clive secured from the Mughal Emperor the title of Maharaja for him.

Nandkumar considered all his political rivals who were in power as his deadliest enemies, and he tried all ways to bring about their downfall. After the departure of Clive in 1767, Nandkumar forced a Brahman to accuse Nubkissen falsely for having violated his wife. On inquiry, the Brahman and his wife both confessed that they had been induced by Nandkumar to prefer the charges, and that the accused was innocent.[2] Thereupon, the Council ordered Nandkumar to confine himself strictly to his house.

In 1772, at the orders of the Directors, Reza Khan was removed from his office for mismanagement and corruptions, and an enquiry was commenced against him.[3] The Directors had required Hastings to employ Nandkumar in counteracting the designs of Reza Khan and to eradicate that influence which he still retained

[1] *Seir Mutagherin*, Vol. III, 3.

[2] Ghosh, *Memoirs of Nubkissen*, 55-56.

[3] Bengal Despatch, Vol. 6, August, 1777, 67.

in the government of the province and more especially in the family of the Nawab.[1] At the same time, Hastings was advised not to trust Nandkumar with any office in the government. Nandkumar, on the other hand, hoped to be appointed in the place of Reza Khan. With that end in view, he furnished Hastings with facts and figures, true or false, against his rival. But the Board did not appoint him to any post. Munny Begum, the widow of Mir Jafar, was appointed as the guardian of the infant Nawab, Mubarak-ud-daulah.[2] However, the Board tried to reward Nandkumar indirectly by appointing his son Raja Gurudas to be the Diwan of the Nawab's household. This did not lessen Nandkumar's disappointment and he had no reason to expect anything more from Hastings.

The rift in the Government that followed immediately after the arrival of the new councillors in 1774, provided a most welcome opportunity to Nandkumar. The majority members of the Council wanted to insult and degrade in the most public manner, their adversary, Warren Hastings. Thus any formidable accuser of Hastings could expect to be noticed by them. Hastings' fortunes seemed to be at their lowest ebb in the early months of 1775. Lust for power being the chief characteristic of Nandkumar, he threw in his lot with the majority. Monson, Clavering and Nandkumar became active in the pursuit of "obtaining information regarding presents received by the members of the late administration".[3] But Nandkumar did not want to remain in the background. On being encouraged by the majority members of the Council and assured of their patronage and support, he came forward with his accusations against Hastings.

From the above account of his career we may infer that he was never actuated by any considerations which might be described as selfless or noble. His few intrigues against the Company were not carried on with the object of driving a foreign power from the soil of Bengal but with the sole purpose of self-aggrandizement. It would be a mistake to suppose that he was the leader of the Hindu community of Bengal. His most formidable rivals—Jagat Seth, Maharaja Nubkissen, Raja Durlabh Ram—were Hindus and he fell, as we

[1] H. P., Add. Mss. 29076, Progs. Committ. of Circuit, 11 July, 1772, 55.

[2] Mubarak-ud-daulah (1770-93) was the third son of Mir Jafar and succeeded to the Nawabship at the age of eleven. (Walsh, *History of Murshidabad*, 183.)

[3] V. P. European letter Book, G. Vansittart to Graham, 25 March, 1775, 71-76.

shall see, on the prosecution of a Hindu. It would be equally erroneous to infer from his friendship with an unscrupulous weakling like Mir Jafar, that he was patriotically attached to the Nawabs of Bengal and strove to maintain their power and strength. In the battle of Plassey, as we have seen, he supported the English against Siraj-ud-daulah. His lack of principle had made him untrustworthy among the English and Indians alike. In the words of the contemporary historian, Gulam Hussain, "he was a man of wicked disposition and a haughty temper, envious to a high degree and upon bad terms with the greatest part of mankind, although he had conferred favours on two or three men, and was firm in his attachments".[1] Sulivan called him 'a snake'.[2] In appearance, he was tall, "majestic in person, robust, yet graceful".[3] He was nearly seventy in 1775.

It was on 11 March, 1775, that Francis produced in the Council, a letter, which, he said, he had received that morning from Nandkumar.[4] On being asked by Hastings whether he knew the contents, he replied in the negative, but added that he did "apprehend in general that it contained some charges against him".[5] In his letter, Nandkumar had first recalled his long services to the Company, then mentioned the reasons that obliged him to prefer charges against Hastings and finally laid a specific charge of bribery against him.[6] The reasons for preferring the charges against Hastings, as mentioned in the letter, were Hastings' refusal to introduce Nandkumar to the newly-arrived members of the Council, his taking into confidence Nandkumar's deadliest enemies, Graham, Jagatchand and Mohan Prasad, and finally, his having turned Nandkumar out of his house with a warning not to visit him again. The allegation against Hastings was that of bribery, that he had received sometime in 1772, from Nandkumar, a sum of Rs. 104,105 and from Munny Begum, Rs. 250,000, for appointing Gurudas, Nandkumar's son, and Munny Begum, to be the Diwan and guardian of the Nawab respectively.

At a meeting of the Council held on 13 March, 1775, a further letter from Nandkumar was received and read. In this letter, he offered to produce vouchers in support of his charges against Hastings. Monson moved that Nandkumar should be called in. Hastings

[1] *Seir Mutagherin*, Vol. III, 79.

[2] Sulivan to Hastings, 20 December, 1774, quoted in Weitzman's *Hastings and Francis*, 210. [3] Busteed, *Echoes*, 67. [4] H. P. Add. 29103, 61-64.

[5] Secret. Consult. 1774, R.A. Vol. 27, 1349-50. [6] *Ibid.*, pp. 1345-48.

opposed the motion and stated that he would not sit at that Board in the character of a criminal, nor would he acknowledge the members of that Council to be his judges. He declared: "I am reduced on this occasion to make the declaration that I look upon General Clavering, Colonel Monson, and Mr. Francis as my accusers".[1]

Barwell opposed the motion and suggested that Nandkumar be asked to file his complaints in the Supreme Court, for, it was the Court, and not the Council which was competent to receive such accusations. But the motion of Monson was carried by a majority of votes. Thereupon, Hastings dissolved and quitted the Council; and Barwell followed him. The majority members of the Council denied that the Governor-General could dissolve the Council. Clavering took the chair and Nandkumar was called in.

In order to support one of his allegations that Hastings had taken a bribe of Rs. 250,000 from Munny Begum for having appointed her in 1772 to the guardianship of the infant Nawab, Nandkumar produced a Persian letter which purported to be that of Munny Begum and addressed to Nandkumar.[2] In this letter, Munny Begum requests Nandkumar to pay Hastings, in Calcutta, on her behalf, a lakh of rupees. She explains why she has to borrow from him: When Hastings was at Murshidabad she wanted to make a present of a lakh of rupees to him. The Governor first declined to accept but on her insistence, he gave a hint that if she thought proper to make such a present she should give him two lakhs. Since she does not hope to raise more than a lakh, she wants to borrow the remaining lakh from Nandkumar and undertakes to pay him back in due course.

The majority members of the Council then briefly examined Nandkumar, putting to him, the leading question: was he ever approached by the Governor-General or his men for the letter of Munny Begum? Nandkumar replied that four months back, Kanta Babu, the *banian* of Hastings, came for the letter, but was refused the original. Kanta Babu was summoned to appear before the Board but as Hastings forbade him to attend, he did not. Nandkumar was dismissed and the majority members of the Council hastened

[1] *Ibid.*, 1456.

[2] Forest, *Selections—Foreign Dept.*, 1772-85, Vol. II, Letter of Munny Begum, 53-54. The letter is dated 3rd of Jumadee ool Sanee, the 14th year of the present reign, which would be, according to the Christian Calender, Monday, 7th September, 1772. (See Reid's *Chronological Tables*, 18.)

to record their finding that the several sums of money specified in Nandkumar's letter, amounting to Rs. 354,105, "have been received by the Governor-General and that the said sums of money do of rights belong to the Hon. East India Company".[1] They resolved that the Governor-General be required to pay into the Company's treasury the amount of those sums. On Hastings' refusal to receive the resolution, they ordered that the proceedings of the Board, and all the papers relative to Nandkumar's charges be delivered to the Company's attorney so that he may lay them before the Council for their opinion on how to proceed in recovering the several sums of money from the Governor-General.

So much for Nandkumar's accusation of Hastings. A few questions must be answered before we proceed to examine Hastings' prosecution of Nandkumar. Were the majority members of the Council a competent and proper authority to inquire into Nandkumar's charges against Hastings? Was the inquiry fairly conducted, and was the decision correct? Did the charges of Nandkumar expose Hastings to any danger?

It is quite clear that the majority members of the Council were not the proper and competent authority to inquire into Nandkumar's charges against Hastings. Shortly after their arrival in India, the new councillors had exhibited their hostile and envious attitude towards Hastings. Long before Nandkumar produced his list of charges, the new councillors had been intriguing against Hastings. Hastings knew a month before he was actually accused by Nandkumar that such charges had been drafted by Nandkumar and corrected by Monson at the latter's house. Hastings was in fact shown a copy of the charge-sheet, which, he was told, was carried to Monson for alterations.[2] Barwell also had seen a copy of the same paper.[3] As early as 25 February, 1775, Hastings wrote to Sulivan:

"Nandkumar, whom I have thus long protected and supported, whom, against my nature, I have cherished like a serpent till he has stung me, is now in close connexion with my adversaries; and the prime mover of all their intrigues."[4]

Even Francis, as he admits in his memorandum, knew long before Nandkumar handed over to him his letter containing the accusations, that Nandkumar was intriguing and plotting with the new councillors against Hastings.[5]

[1] Secret. Consult., R. A., Vol. 27, 1478-9. [2] *Ibid.*, 1461. [3] *Ibid.* [4] Gleig, *Hastings*, Vol. I, 506. [5] Parks, *Francis*, Vol. III, Francis Memo., 49.

In view of the above circumstances, of which Hastings was thoroughly aware, it appears quite natural and justifiable on his part to have refused to admit the competency of the majority members of the Council to inquire into Nandkumar's charges. Mill disapproved of the conduct of Hastings in dissolving and quitting the Council, and commented that what Hastings alleged as an excuse for his conduct was the "dignity of the accused, and the baseness of the accuser".[1] Obviously, Mill did not take into account the fact that in this case, the real accusers of Hastings were the majority members of the Council. The new councillors used Nandkumar as a weapon in their struggle for power. Hastings knew it and he rightly refused to be tried and sentenced by his accusers.

The second question carries a number of implications. Was the inquiry fairly conducted? Was there any truth in Nandkumar's charges? In other words, had Hastings, in the first place, received any money from Nandkumar and Munny Begum? If so, had he accepted it as bribery for having appointed Nandkumar's son, Gurudas, and Mir Jafar's widow, Munny Begum, to the Nawab's household, or, as presents according to the old customs of the country?

As far as the inquiry is concerned, it can be said at the outset that it was unfairly conducted and the decision of the majority members of the Council was hasty, rash and scandalous. The only evidence which Nandkumar could furnish in support of his several charges was the letter of Munny Begum. In his letter to Graham and Maclane, 25 March, 1775, Hastings asserted:

"The letter produced by Nandkumar as Munny Begum's is a gross forgery. I make no doubt of proving it. It bears most evident symptoms of it in the long tattling story told with such injunctions of secrecy, and a word to the wise pertinently added to the end of it, when the sole purpose of the letter was to order the payment of a lac of rupees, and Nandkumar's son and son-in-law were with the Begums and daily informing him of all that passed."[2]

The implicatory style of the letter does cast heavy suspicions on its genuineness. Besides it is doubtful that Munny Begum was in such a modest financial position that she could not manage more than a lakh, and had to borrow another lakh from nobody else but Nandkumar, who was by then most distrusted by Hastings. A con-

[1] Mill, *History of British India*, Vol. III, 637. [2] Gleig, *Hastings*, Vol. I, 515.

temporary historian records that Munny Begum had a large fortune and in order to keep the Nawab under her control she at times threatened to squander her fortune among the poor or Europeans.[1]

This letter should have been closely scrutinised. What the councillors did was simply to ask a man from the Persian department to verify the seal on the letter. The man said that the seal on the letter was that of Munny Begum. Then the letter was returned to Nandkumar. Why were the councillors in such a hurry to return the original to Nandkumar?

Supposing that the letter was genuine, even then, it did not prove that more than two lakhs of rupees were received by Hastings. What other evidence existed, except the written and verbal assertion of Nandkumar, "who was not only an avowed accomplice in the alleged corrupt acts but one who professed himself to be actuated by motives of revenge and suspicion against the man whom he accused". If they meant to hold a fair inquiry, they should have summoned the several persons referred in Nandkumar's charges, viz. Munny Begum, Jagarnath, Balkissen, Nur Singh, Sevaram, Chetan Nath, and Sadanand; the last two were in Calcutta at that time. On the contrary, the only person they summoned was Kanta Babu, the *banian* of Hastings. What other motive but to insult their adversary, could be imputed to their demand? Even Nandkumar was not examined on many of his statements. Only leading questions were put to him, such as:

"Are you sure that the Governor's two gumastas received the money on account of the Governor?"

"They undoubtedly took it for the Governor. I asked the Governor if it had reached him and he said it had."

It appears as though Nandkumar was being examined by his own counsel. In all fairness he should have been cross-examined. It seems that the whole purpose of the inquiry was, not to recover for the Company the sums of money Hastings was alleged to have received, but to disgrace and insult him in the eyes of the Indians at Calcutta and of the Directors at home.

Did Hastings receive any money from Munny Begum? Perhaps he did. But if so this was given to him not as a bribe but as a present according to the old custom of the country. Munny Begum declared in writing that she never gave anything by way of a bribe to Hastings:

[1] *Seir Mutagherin*, Vol. III, 76.

"The sum given to Mr. Hastings is according to old custom by way of entertainment in lieu of victuals. When the Nabob Nadjum-ul-Dowla and the Nabob Seij-ul-Dowla went to Calcutta, they received this mode of entertainment there and so when any of the governors came to Moorshidabad they receive it every day from the Nizamat."[1]

On the last question—to what straits, if any was Hastings reduced by Nandkumar's accusations?—it may be first observed that Hastings was not taken unawares by Nandkumar's charges and also by the decision of the Council. He knew a month before Nandkumar actually accused him that such charges were framed at Monson's house. Secondly, it is hard to believe that Hastings had received any present or bribe from Nandkumar for appointing the latter's son to the household of the Nawab. The appointment was made in consideration of Nandkumar's services in counteracting the influences of Reza Khan.[2] Nandkumar had hoped to be appointed in Reza Khan's place. The reward he got for his services was less than he had expected.

Supposing that Hastings had received bribes from Nandkumar and the latter had been a go-between in various other nefarious transactions of Hastings, would Hastings, have turned Nandkumar out of his house and warned him not to visit him again, especially in the early months of 1775, when the majority members of the Council had become the avowed enemies of Hastings and were offering rewards to those who could accuse the Governor-General? Though Hastings was deprived of most of the power it was always within his means to keep Nandkumar in good humour. A few endearing words and a promise for favours would have sufficed to keep Nandkumar in his party, because Nandkumar had not made up his mind by then as to which of the two parties in the government was likely to foster his interests more. If Nandkumar's accusations were to render Hastings so desperate that only Impey's hands could save him from utter ruin, he would not have forsaken Nandkumar and driven him to the opposite camp.

Furthermore, Hastings, upon the supposition of his guilt, would not be saved by Nandkumar's death from the only danger which

[1] V. P., Add. Mss. 48370; Munny Begum's account of her relations with the English. The document is an English translation of the original; it is not dated, but it might have been made some time before George Vansittart left for England in 1775. [2] H. P. Add. Mss. 29076, 55.

Nandkumar's charges had exposed him to, the danger of being recalled in disgrace by the Directors and of being sued in the Chancery Court for the recovery of a sum of about £40,000 on his return.[1]

In order to prove that Nandkumar's charges had literally terrified Hastings, Beveridge refers to one of his letters addressed to his agents Graham and Maclean on 27 March, 1775.[2] In that letter, Hastings informs them of his resolution to leave his place, and return to England on the first ship of the next session, "if the first advices from England contain a disapprobation of the treaty of Benares or of the Rohilla war, and mark an evident disinclination towards me".[3] It is evident that he was worried, but the main reason does not seem to be Nandkumar's charges against him. A man was hardly likely to plan a judicial murder "in order to avoid the possible loss of an office which he had authorised his agent to resign upon a contingency unconnected with the person to be murdered".[4] In his letter of 18 May, 1775, to his agent, he appears happier and more secure. One of the reasons for this might be that Nandkumar was "in a fair way to be hanged", but had he been actually involved in a conspiracy with Impey to murder him, he would not have chuckled over the matter to his agents.[5] The tone of the letter is rather that of a man "who has met with a piece of unexpected good luck than that of a murderer who has taken the first step towards the execution of his design and sees its consummation".[6]

HASTINGS' PROSECUTION OF NANDKUMAR FOR CONSPIRACY; APRIL – JULY, 1775

We have seen how rashly and in utter disregard of the principles of justice the majority members of the Council conducted themselves on the charges preferred by Nandkumar against Hastings. Hardly another month had passed before Hastings and Barwell bound themselves before the judges of the Supreme Court to prosecute Nandkumar, Fawkes and Radhacharan for conspiracy. Quite naturally this makes one conjecture that only motives of retaliation and possibly a plan to disgrace the accuser of the Governor-General might have prompted Hastings and his loyal friend Barwell to prefer this prosecution against Nandkumar and others. At any rate

[1] Stephen, *Story of Nuncomar*, Vol. I, 74. [2] Beveridge, *Nandkumar*, p. 126.
[3] Gleig, *Hastings*, Vol. I, 521. [4] Stephen, *Story of Nuncomar*, Vol. I, 75.
[5] Gleig, *Hastings*, Vol. I, 532-3. [6] Stephen, *Story of Nuncomar*, Vol. I, 76.

this was how it was understood by Sir Gilbert Elliot and other accusers of Impey as is evinced by the first part of the first article of the charge against Impey.[1]

I therefore, propose briefly to examine the facts and circumstances of this case in order to establish the truth of the matter.

The trial of Nandkumar for forgery and that of Joseph Fawke, Francis Fawke, Radhacharan and Nandkumar for conspiracy against Hastings and Barwell was first printed in London by Cadell in 1776 under the authority of the Supreme Court of Judicature at Calcutta.[2] Mackintosh, referring to Cadell's edition, wrote: "The trial published in England, is universally declared, on this side, to be spurious and false".[3] This allegation is untenable. Elliot, who acted as interpreter during the trials, left India in 1775, and the judges gave him an authenticated account of the trials and authorised him to get that printed in London.[4] Thus, it was Elliot who was virtually responsible for the publication of the 'Trials'. Of Elliot's honesty and integrity, not only Impey but Francis, Farrer, Bogle and even the author of 'Travels' himself had the highest admiration.[5] Could a man of such ability and integrity be deceived and duped as to any part of a business in which he was both an eye-witness and an actor?

Turning to the facts of the conspiracy case, its circumstances date back to the month of December, 1774. One Banarsy Ghosh, a tenant of Kamaluddin Khan, had made a complaint against the

[1] *Articles of Charge*, 1788, First Charge, 1-7.

[2] Cadell's deposition before the House, 16 April, 1788, Impey, *Speech*, 218-22. The same version of the trial as published by Cadell was later inserted verbatim in the State Trials. (*State Trials*, Vol. 20, 1078-1226, conspiracy case; 923-1078, forgery case.) A verbatim report of the trial was published by P. Mitter with his introduction in 1906 in India. (Tracts, 1035).

[3] Mackintosh, *Travels*, Vol. II, 198.

[4] Letter of the judges to Elliot, 10 August, 1775; Impey, *Speech*, 219.

[5] Impey in his speech before the Commons, referred to Elliot as a "Gentleman of known honour". (*Speech*, 138-9). George Bogle in his letter to Impey dated 30 September, 1778, mourning the death of Elliot, wrote: "He possessed every talent and every virtue that the warmest imagination could draw; and I have often tried to discover one fault or defect in his character, in vain". (*Speech*, 141). Francis, when asked before the Committee of the Whole House as to what was the general character of Elliot, said, "As far as I know he bore a remarkably good one". (*Speech*', 243). Mackintosh wrote of Elliot: "of the most amiable characters, and elevated geniuses that ever dignified humanity". (*Travels*, Vol. II, p. 311).

latter to Clavering.[1] Clavering summoned both parties and referred them to Joseph Fawke. Shortly after the dispute had been referred to Fawke, Kamal went to Hastings one day and complained to him orally and then in writing against Fawke, alleging that Fawke had threatened him with punishment if he did not declare what sums of money he gave to the Governor-General and others to get the contract which was the matter of dispute between him and Banarsy Ghosh. A written complaint against Fawke was handed over to Hastings. On the basis of that complaint, which was entered in the revenue proceedings of 13 December, Hastings moved in the meeting of the Board, that Fawke should be deprived of the authority which had been given him by Clavering to inquire into disputes of such a nature. Hastings' motion was overruled by the majority members of the Council; the reason being given that Fawke must be heard before he was condemned. Fawke answered to Kamal's charges by a letter, received in the Council on 16 December, 1774. He wrote: "The charge of commul ul Dien Cawn is loaded with falsities and misrepresentations from beginning to end."

Nearly four months after the above event, on 19 April, 1775, Kamal came to Hastings for the second time complaining against Fawke for having with violence extorted from him, accusations against Hastings and others.[2] Hastings referred him to Impey, who heard Kamal, called the other judges to his residence and issued summons to the parties concerned. On 20 April, 1774, Kamal, Nandkumar and Fawke gave depositions before the judges.

Kamal's version of the circumstances, under which an accusation against Hastings and others was forcibly extorted by Fawke and others, is a long one and can only be pieced together from his depositions made before the judges on 20 April, his examination thereon, and his examination-in-chief and cross-examination during the trial which commenced on 19 June, 1775, three days after the trial of Nandkumar for forgery.

Kamal had a demand on Ganga Govind Singh, the Diwan of the Calcutta district, for a sum of Rs. 26,000. In order to secure payment of the said amount from Ganga Govind Singh, Kamal prepared two *argees* (written complaints) against him and deposited them with Nandkumar. He asked Nandkumar not to forward the *argees* to the Council until the arrival of one Sadruddin in

[1] Revenue Consult: 1774; R. 49, Vol. 48, 113-15.

[2] *Trial*—Depositions in the Conspiracy Case—51.

Calcutta, from his country-side home. On his return to Calcutta, Sadruddin was to negotiate between Ganga Govind Singh and Kamal. If Kamal got the payment of the said amount from the Diwan through the good offices of Sadruddin, he would give Rs. 6,000 to Nandkumar and the latter would return his *argees*.

Next morning when Kamal visited Nandkumar, the latter asked him to become reconciled to Fawke who would introduce him to the majority members of the Council and get for him an appointment at Purnia. Accordingly, Kamal called on the next day upon Fawke who treated him very kindly.

When he next met Nandkumar, the latter asked for a copy of the *argee*, if not the original, which Kamal gave to the Governor-General during December. On the following day, Kamal got it written from whatever he could remember, sealed it and carried it to Nandkumar.

About a week passed during which Kamal, by the interceding of Sadruddin got the payment from Ganga Govind Singh. He therefore went to Nandkumar for the return of his *argees* against Ganga Govind Singh. Nandkumar told him that his petitions were with Fawke, that Fawke would be pleased to return them to Kamal if he could write a petition stating that Hastings and Graham extorted from him that *argee* which he filed, during December, against Fawke.

"I was then remediless, and considered in my own mind how I should get back the two *argees*; and came home, and wrote down whatever occurred to me, *i.e.* I caused it to be written."[1] On examination of what Kamal had written by himself, Nandkumar told him that it was insufficient and asked him to meet him in the evening, with his writer. That evening, while the petition was being drafted at Nandkumar's house under the latter's direction, Kamal felt some pain in his stomach and returned home. The same night, when Kamal was home, Yar Muhammad came to him with the final draft of the petition and asked him to seal it. Kamal refused to seal it because that was not in the agreement.

Next morning Kamal visited Joseph Fawke, who was sitting on his bed. Fawke showed him the petition and asked him to seal it. Kamal repeated that it was not in the agreement whereupon Fawke grew angry. Kamal got frightened, put his *jamma* around his

[1] *Ibid.*, on the Prosecution of Hastings, 6.

neck, fell at Fawke's feet and entreated him not to get it sealed because it was all false. Fawke, in anger, raised a book in his hand and swore at him. Kamal became so afraid that he agreed to seal it. Fawke cooled down, and the *argee* was sealed and witnessed by two persons who were near the room. Fawke then read out a *furd* (another paper) to him and asked him to sign. The *furd* stated various sums given by Kamal as presents to Hastings, Barwell and others.[1] Upon some of the names Kamal wrote "I had given", upon others he wrote "I delivered". Fawke asked him to go away. Kamal left in distress, met Francis Fawke, son of Joseph Fawke, and entreated him to get those papers which his father had just taken from him by force. Francis asked him to come the next day when Nandkumar would be there. Kamal first went home, then to Sadruddin, to whom he told what had happened at Fawke's and asked him to acquaint Vansittart and Barwell of the same.

Next morning, when Kamal went to Fawke's, Nandkumar was there, and he told Kamal that Fawke could not be persuaded. Kamal cried in disappointment, tore his upper garment and boarding his palanquin went to the chief justice's house. Nandkumar, in his deposition, asserted two points. Firstly that the written complaint alleged by Kamal to have been forcibly extorted from him, was in fact willingly sealed by Kamal at Kamal's house, and attested by two witnesses at Fawke's house. Secondly, that Kamal desired that his complaints against Ganga Govind Singh should first be put before the Council and not the petition which implicated Hastings, to which Fawke did not agree. Hence Kamal went to Hastings complaining.

Joseph Fawke deposed that the petition in question came to his hand ready sealed, and Kamal acknowledged it in the presence of two witnesses. But as soon as Kamal had quitted the chamber he came back and declared his unwillingness to have that petition presented to the Council; he fell at the deponent's feet and embraced his leg with such violence as to hurt him. Being provoked at this, he lifted a book and all but struck Kamal with it. He further deposed that every word of the *furd* was false, that he never saw or heard of such a paper. When Barwell said something upon the subject

[1] *Ibid.*,—Depositions in the Conspiracy Case—8.

Rs. 45,000 to Barwell within a period of three years. Rs. 15,000 to Hastings. Rs. 7,000 to Raja Rajballab. Rs. 12,000 to Vansittart. Rs. 5,000 to Kantoo Babu, *banian* of Hastings.

Fawke, asked him in a very earnest and pointed manner, "Will you, sir, declare upon your honour, or your oath, that you never received that money (meaning the 45,000 rupees said to have been mentioned in the *furd* as being received by Mr. Barwell)".[1] Barwell replied, that "he did deny it upon his honour and oath". Then said Mr. Fawke, "I must acquit you".

The examination of the witnesses being closed, the judges required of the persons concerned in the supposed conspiracy, to declare whether they would prosecute the authors of it at the next session of Oyer and Terminer; and the morning of 23 April was appointed to receive their decision.[2] Barwell, Vansittart and Hastings attending, declared their intention to prosecute Fawke, Nandkumar and Radhacharan.[3]

The first session of Oyer and Terminer was held by the Supreme Court in the first week of June. And it was the forgery case and not the one for conspiracy which was tried first, though the discovery of the latter was made earlier than that of the former. We may ask why was the forgery case tried before the conspiracy? Giving reasons, Impey said, at the Bar of the House of Commons:

"No order was made as to the priority of the trials; the indictments came on for trial in the usual order. Felonies are in general tried before misdemeanours; but it is the universal practice at every session which I have attended, either in England or Bengal, when an indictment for felony, and another for a misdemeanour, is found against the same person, to try him for felony first, because, if found guilty of that, it would be unnecessary to put him to answer for the latter offence."[4]

Farrer, the counsel for Nandkumar in the forgery case, while giving his evidence before the Committee of the whole House in 1787, assigned a somewhat different reason:

"The second or third day of the session, on the instance of Mr. Fawke, I moved that the trial for the conspiracy might be brought on, supposing the bills to be found, before the trial for the forgery. The motion was rejected, that is to say, that the Court would make

[1] *Ibid.*, 13. [2] *Ibid.*, 13.

[3] George Vansittart withdrew his indictment on 17 July, 1775, two days after Nandkumar and Fawke had been found guilty on Barwell's indictment. He dropped his indictment because he feared that Kamal may "be harassed into some contradictions" at cross-examination. (George Vansittart to Graham, 4 August, 1775, V. P. European Letter Book, 111.) [4] Impey, *Speech*, 66.

no order, but that the prosecutors must bring on the trials as should best suit their own convenience."[1]

An entirely different and more plausible explanation can be found from one of George Vansittart's letters: "Mr. Fawke having been ill, the trial for the conspiracy was delayed till the beginning of July".[2]

Separate indictments were framed by the jurors, one on Hastings and the other on Barwell's prosecution. About twenty-one witnesses deposed during the trial, including General Clavering, Colonel Thornton and George Vansittart.[3]

Here we may pose the following questions:

First, was the charge of conspiracy against Nandkumar and others a premeditated design on the part of Hastings, to discredit Nandkumar and thereby defeat his accusations against him pending in the Council? It may be recalled that the accusers of Impey and Hastings did allege that Hastings first tried to ruin Nandkumar on a conspiracy charge, but having realised that it did not sufficiently implicate Nandkumar, he got him capitally indicted on a charge of forgery preferred ostensibly by Mohan Prasad.

Second, was the *argee* at issue extorted from Kamal? If it was sealed at his house then it was not extorted from him. On the other hand if it was sealed at Fawke's house then either it was sealed under force and threat or at free will.

Third, if the petition was not really extorted from Kamal, what motive and purpose had he in his mind to prefer it and what led him immediately afterwards to ask for its return?

Regarding the first question, it is to be observed that Hastings, until the last hour, had no knowledge as to what was going on between Kamal, Fawke and Nandkumar. There is evidence to show that it was only on 19 April when Kamal narrated to him his story, true or false, that he came to conceive the possibility of prosecuting his avowed enemies in the Supreme Court. Yet he spared no pains to convince himself about the truth of Kamal's charges. To his most trusted and intimate friend, Vansittart, Hastings wrote on 21 April, 1775:

"C' O' Din has been with me. He persists in his story. I have

[1] *Ibid.*, 112.

[2] V. P. European Letter Book, Vansittart to Palk, 3 August, 1775, 100-8.

[3] *Trials*, Conspiracy Case; on Hastings' Prosecution, 1-34; on Barwell's Prosecution, 1-31.

begged and entreated him to reveal the whole truth to me, and not to deceive me. I have told him it must be discovered if the matter is led to a trial, and will bring shame on him if he is false. He swears that every syllable is true, and has told the whole over again with additional circumstances, and a variation in the manner and expression, but with so exact a consistency that I cannot refuse my credit to it. If you know any way to look into a man's heart, I wish you would take a peep at his, for unless I was morally certain of the fact, I would not for the universe proceed in it; and if I was certain, I would not for the universe drop it."[1]

The very tone of the letter proves that Hastings had no knowledge of what was brewing in the opposite camp till Kamal came to him with his story and that Hastings, after a careful examination of Kamal, was in all good faith convinced that Kamal's complaints were true.

When he was thoroughly convinced it was but natural for him to prefer a charge against Nandkumar and Fawke. Kamal might have been a welcome guest to Hastings, yet there is no proof to show that any invitation was ever given to him. A premeditated design cannot be imputed to Hastings unless it can be shown that immediately after Nandkumar had preferred his charges against him he asked for the help of Kamal, and sent him into the opposite camp with an instruction first to sign and seal certain documents and then to complain that his signature had been forcibly extorted from him.

Coming to the second question, quite a few statements made by Kamal seem incredible. What is the logic in his depositing with Nandkumar two petitions against Ganga Govind Singh, when no action was to be taken on them until the arrival of Sadruddin? He said it was to frighten him to come to terms. He might have frightened him by holding out to him the threat of filing a complaint if he did not pay him back. Why did he actually file the complaint? He might have spoken a hundred lies to Govind Singh rather than gone to Nandkumar of whose intriguing character he was well aware.[2] Again, what made him so remediless as to agree to give

[1] V. P. Add., Mss. 48370, Hastings to Vansittart, 21 April, 1775. A similar letter was written by Hastings to Graham & MacLane on 29 April, 1775, (Gleig, *Hastings*, Vol. I, 523.)

[2] Kamal deposed during Nandkumar's trial for forgery that he had come to know years before that his seal was affixed on the forged bond by Nandkumar

a petition, implicating the first magistrate of the settlement? Nandkumar's refusal to return his *argees* until he gave such a petition seems a lame excuse. What harm would those *argees* have caused him or Govind Singh if they had been left with Nandkumar or Fawke? His accounts with Ganga were settled and they were almost reconciled. Those *argees* were of no consequence to Nandkumar and Fawke. It does not seem natural, indeed it is incredible, that a man would implicate the Governor-General in order to keep a Diwan safe from the remotest possible dangers.

However, he agreed to give a false petition but subsequently refused to seal it, because it was not in the agreement. Here it may be asked of what use, if any, that petition would have been to Fawke and Nandkumar if it was not to be authenticated by Kamal either by his seal or signature. The agreement would have been a farce if signing or sealing the document did not constitute a necessary part of it. Supposing that sealing the document was not in the agreement, it follows that the exclusion of such a term must have been expressly agreed upon. In that case Nandkumar would not send the document to Kamal at the latter's house to get it sealed by him without having conversed with Kamal on that subject before he left Nandkumar's house. It would have been sheer foolishness in Nandkumar to hope that the document would be signed by Kamal of his own free will, when the sealing or signing was expressly excluded from the terms of the contract. But the person by whom, and the circumstances under which the petition was presented to Kamal for his seal or signature, strongly suggest that authentication by seal or signature constituted a necessary part of the agreement. When the final draft was ready, it was carried to Kamal's house late at night by Yar Muhammad, an ordinary servant of Nandkumar, who by his status was surely too humble a man to persuade Kamal to do something which he had expressly agreed not to do. If Kamal was to be persuaded or forced to affix his seal on the document, which was so laboriously prepared at Nandkumar's house until late that night, which by its very nature and the purpose it was designed to serve, needed authentication by Kamal, the best place was the house of either Fawke or Nandkumar in the presence of both or either, but it was certainly not Kamal's house where he had the fullest control over his fears and apprehensions.

without his consent; also that Nandkumar had confessed to him of the forgery. (*Trials*—Forgery Case—9-10).

In view of the fact that Kamal was a man of wavering disposition, it can be argued that though he had agreed to make such a declaration under his seal, yet due to lack of confidence and fear of being exposed to greater dangers, he was all along trying to evade the issue, and, therefore, it is likely that he evaded affixing his seal on the document that night when he was approached by Yar Muhammad. Why then and for what reason did he visit Fawke next morning? He ought to have reasonably presumed that Fawke would either force him to sign the document or would refuse him the return of those *argees*. The person he ought to have visited next morning was neither Fawke nor Nandkumar but was either the Governor-General or Ganga Govind Singh.

In order to prove by direct evidence that the petition was not sealed at his house, Kamal produced a witness, Hussein Ali, his cook.[1] Hussein Ali deposed that he met Kewdernawaz, a clerk of Kamal, on the staircase, and the latter asked for the ink-pot and the seal as his master was going to seal a document. Hussein Ali, who had the custody of the seal, brought it down, handed it over to Huttoo, another servant of Kamal, asking him to stand by the side of the door until he was asked to bring in the seal, and he himself went into the room where he saw Yar Muhammad sitting beside his master and his master's clerk. After a few hours, when Yar Muhammad left Kamal, Hussein Ali came out and informed Huttoo that the seal was no longer required.

Why did Hussein Ali hand over the seal to Huttoo and go into the room? He might as well have carried the seal with him. He, being a cook of Kamal, was not expected to attend such meetings as his master was holding at that time. If Kamal was very informal even with the humblest of his servants then the formality of giving the seal to Huttoo and asking him to stand by the side of the door, should not have been observed. The deposition of Hussein Ali, therefore, is suspicious and sounds like a concocted tale.

Supposing that the document was not sealed at Kamal's house. Then it must have been sealed at Fawke's house. Was it then sealed under such threat or force as amounting to extortion? Had Kamal no option but to seal the document? According to his own version, when Fawke raised a book in his hand he apprehended his life and reputation in danger and being remediless, sealed the document

[1] *Trials*, 23-24.

and signed the *furd* while remaining prostrate on the ground. The whole emphasis is on Fawke's raising the book to strike him. When Kamal was asked:

"Do you know, or think, that the four people...were set on you as guards?"

"No."

"Did you ever attempt to go away before you actually did go?"

"When Mr. Fawke told me to go, I did go."[1]

Kamal, who could say to Nandkumar's face that his preferring of charges against Hastings was a shameful act,[2] grew so timid at Fawke's raising a book against him that he apprehended the loss of his life and reputation and sealed a false document which a normal man would seal only at the point of a pistol. The raising of a book and the calling of names in anger do not amount to a sufficient threat to life and reputation. Wherever the petition was sealed, either at Fawke's or at Kamal's house, it was not sealed under force or threat; it was sealed at the free will of Kamal.

The court, therefore, held on the prosecution of Hastings that the accused were 'not guilty', which meant that the petition, alleged to have been extorted from Kamal by Nandkumar and others, was really given at his free will. Why then did Kamal ask for its return? This leads us to the last question.

Kamal, being a farmer and revenue-collector, his prosperity very much depended upon the favour of the government. Since the arrival of the new members of the Council, the government was divided into two opposite factions, each intriguing and plotting against the other. Naturally, the notable gentry of Calcutta and the servants of the Company became followers and supporters of one or the other group. Among the public there are always many who follow power, not men. Kamal was one among them. In March, after Nandkumar had preferred charges against Hastings, the power of the government, in the eyes of the public, seemed to have shifted to the majority members of the Council. Hastings seemed deprived of all powers. Many deserted his camp. Enrolment in the other camp was easy through Fawke and Nandkumar. So it was quite natural for Kamal to seek the favour of Nandkumar. But he had some special difficulty. In the previous December he had accused Fawke, perhaps to please Hastings and retain his favour. Reconci-

[1] *Ibid.*, Barwell's Prosecution, 8. [2] *Ibid.*, Hastings Prosecution, 5.

liation with Nandkumar was not possible until Fawke was reconciled. Kamal had to pay the price. He deposited with Nandkumar, complaints against Nandkumar's enemy—Ganga Govind Singh—and in order to be reconciled with Fawke, he had to give something in writing which would withdraw his former allegations against Fawke, and implicate Hastings. Kamal consented to do so accordingly. The prospect of being appointed to some sort of post at Purnia might have been the additional reason. Something happened at the eleventh hour which changed his mind and he wanted to take back his *argee*. Probably Sadruddin may have persuaded him not to change camps, to take back his *argees* and stick to Hastings. Or he might have given that *argee*, under certain conditions, that it was not to be referred to the Council until he got some appointment, and perceiving that Fawke was going to send that *argee* soon to the Council, which Fawke did do, he protested and finally broke away.

Why was Nandkumar held guilty on Barwell's indictment?[1] The sole charge in Barwell's case, was about the *furd*, and Nandkumar in no way was connected with the extortion of the *furd*. Either the jury committed a mistake in their verdict, or they did not think Nandkumar in any way affected by their verdict, because at that time he was confined under a sentence of death. Yet, there can be a third reason. While arguing in his speech before the Bar of the House of Commons, as to why and on what grounds mercy could be granted to Maharaja Nandkumar, Impey said:

"Should the circumstance stated in the charge of his having been indicted by Mr. Hastings and others on a conspiracy of bringing false accusations, have been assigned as reasons for mercy? A jury had, on one of those indictments, found the charge to be true, and there was no apparent relation between the two prosecutions."[2]

Here, Impey appears to be making capital out of Nandkumar's conviction on a conspiracy charge. His being held guilty on Barwell's indictment is unsupported by evidence. Was he, therefore, held guilty to let the people in England and India know that the forgerer was a conspirator too?

[1] On Hastings' charge, which was based on the extortion of the 'argees', the accused were held not guilty, but on Barwell's charge, Nandkumar and Joseph Fawke were held guilty. Joseph Fawke was fined £50 and was required to give security for two years good behaviour. (Vansittart to Graham, 4 August, 1775, V. P. European Letter Book, III). [2] Impey, *Speech*, 91.

The conspiracy trial is significant in one way. Had there been no Supreme Court, the majority and the minority parties of the government would have become more violent in the settlement of their differences. The minor clashes would have developed into a major crisis and before long, the settlement might conceivably have fallen into the grip of a civil war.

IMPEY ON THE POLITICAL STATUS OF THE NAWAB

During the conspiracy trial the majority members of the Council raised a point of law. They claimed diplomatic immunity for one of the defendants, Radhacharan, the son-in-law of Nandkumar. They stated that Radhacharan was the vakil or ambassador of the Nawab. Their claim was based on the assumption that the Nawab of Bengal was a sovereign prince. Thus, the court was, perforce, led into an inquiry into the political status of the Nawab.

This was a delicate question. If it was not the Nawab then who was the sovereign of Bengal? Since the battle of Plassey, the East India Company had been the *de facto* sovereign of Bengal. Since then the Nawab had been so much dependent on the British rulers of Bengal that he could not, without their sanction, even presume "to hurt the least hair of an Englishman's head".[1] But the French, the Portuguese and the other European powers would not accept the E.I.C. as the legal sovereign of Bengal. The British crown was indisposed to assume the sovereignty of Bengal.

Bengal was governed by the British under the fiction of Nawab's sovereignty. Yet, how could the Nawab be the sovereign of Bengal? In theory, at any rate, the Nawab and the E.I.C. were both the servants of the Mughal Emperor.

How could a Diwan and a Subahdar send ambassadors to each other's court?

If it was in the Company's interests that the myth of the Nawab's sovereignty be maintained, then the majority members of the Council acted very unwisely in raising this issue for judicial inquiry. For Impey and his colleagues, were determined to judge a case by law and not by political considerations.

The inquiry took four days of June—July, 1775. Was the Nawab, Mubarak-ud-daulah, in a situation to make war and peace with

[1] *Bengal Past and Present*, Vol. IX, Barwell to Beaumont, 1 January, 1767, Letter No. XLIX, 110-11.

the British settlement of Calcutta? Could he appoint his ministers, and perform all acts of sovereignty, independently, and without the control of the British government?

Nobody, not even the majority members of the Council, believed that the Nawab possessed either of the above marks of sovereignty.

Under the articles of the treaty and agreement signed by the Nawab and the Company, the protection of the provinces of Bengal, Bihar and Orissa was entirely left to the Company's management and discretion. The Nawab was deprived of the right to maintain a regular army. He lived on a Company's allowance, which the Court of Directors could reduce without consulting him. The so-called subjects of the Nawab were at liberty to evade his civil or criminal jurisdiction, if he exercised any, by becoming directly or indirectly the servants of the English Company, or of any British subject. In August, 1772, the President and Council did plan and constitute regular courts of justice, civil and criminal, by their own authority, for the administration of justice to the inhabitants of Bengal, without consulting the Nawab or requiring his concurrence, and the said criminal courts were put under the inspection and control of the Company's Servants.[1]

The Nawab exercised no authority, not even over his household. The English Company appointed and dismissed the officers of the Nawab's household; and the Company never sought the Nawab's concurrence in the exercise of their paramount authority. The majority members of the Council, who showed such a nice sensibility for the Nawab's privileges during the trial of the conspiracy case, had only a short time before, sent a junior servant of the Company to deprive Munny Begum of the guardianship of the Nawab.

Thus, Impey rightly observed that the Nawab, not being in a position to declare war or peace with the English settlement, the right of sending ambassadors did not rest with him. Impey had also found that Radhacharan was not in the service of the Nawab "at the time the crime charged on him was supposed to be committed".[2]

Thus, the court demolished the myth of the Nawab's sovereignty. "If any material consequences follow from it", Impey observed, "the gentlemen should have been backward in forcing us to a decision; for we must give such an opinion, whatever may be the conse-

[1] Affidavit of Hastings taken before Impey on 28 June, 1775, H.M.S. Vol. 125, 45-46. [2] I.P. Letter Book of Impey, Vol. 16265, 239-40.

quences, as we think founded in law. They were to judge the Politics ...we must judge by laws not by Politics."[1]

So ended the conspiracy trial. The judges for the second time had shown to Indians, that all men, irrespective of their caste, colour, race or rank, were equal in the eyes of the law. An Englishman of Fawke's rank was fined for conspiracy. A Maharaja of Nandkumar's influence and powers had been condemned for forgery. The Indians of Calcutta were now beginning to feel the impact of the British rule of law.

[1] *Trials*, 16.

CHAPTER III

IMPEY AND NANDKUMAR: THE FORGERY CASE, 1775

THE COMMITMENT OF NANDKUMAR: MAY 1775

On 6 May, 1775, Hyde and Le Maistre, acting in their capacity as justices of the peace, upon the depositions of Mohan Prasad, Kamaluddin, Kissen Jaun Das and others, committed Nandkumar under English law for having feloniously uttered as true a false and counterfeit writing in order to defraud the executors of one Bulaki Das deceased.[1] Kissen Jaun Das deposed that he had been in the service of Bulaki Das for nearly thirteen years and had seen him executing bonds, that he always signed bonds and did not put his seal on them, that the counterfeit writing in question, which purported to be a bond executed by Bulaki Das in favour of Nandkumar, did not seem to the deponent a genuine one.[2]

Very little is known about the commitment proceedings and from what we know it is hard to find out who prosecuted Nandkumar for forgery. It could have been either Ganga Bissen or Mohan Prasad or Gowry Ballabh Das.[3] But this much is certain that Mohan

[1] Secret Consult, 1775, R.A., Vol. 28, Proceedings of 8 May, warrant, 2144. Bulaki Das Seth was an up-countryman by birth and belonged to the Agarwala Community. He was a banker and carried on his business at Murshidabad and Dacca. When the war broke out between the Company and Mir Kasim in 1763 he was forced to leave Bengal with his patron Mir Kasim. While he was away, his property at Dacca and Murshidabad was either seized by the Company or plundered by his enemies. The Company later granted him permission to return to Bengal and he arrived in Calcutta about 1765. He died in June 1769, leaving behind him his widow and nephews.

[2] Impey, *Speech*, Deposition of Kissen Jaun Das, 98-99.

[3] *Ganga Bissen* was the nephew of Bulaki Das and one of the trustees appointed under the latter's will, dated 12 June, 1769. After Bulaki's death the probate of his will was granted to Ganga by the Mayor's Court in September 1769. Thus, being the executor of Bulaki's estate it was he who could be the prosecutor. We find that on the grounds of ill-health he granted power of attorney to Mohan Prasad and the latter, in that capacity, became entitled to prosecute Nandkumar in the Supreme Court. Whether this power of attorney was given before or after the commitment proceedings is unascertainable.

George Vansittart wrote in one of his letters that it was Gowry Ballabh Das,

Prasad was the real mover in the whole affair from beginning to end.[1] It was he who visited Vansittart on 26 April, 1775, and told him that he wanted to prosecute Nandkumar for forgery but he would not confide in Thomas Farrer as the prosecution counsel; thereupon Vansittart advised him to hire another counsel Durham.[2]

It was again Mohan Prasad who on 7 May, 1775, gave a bond to prosecute Nandkumar in the Supreme Court and it was on his prosecution that the trial commenced on 8 June, 1775.

The new councillors were humiliated at the commitment of Nandkumar for forgery and his confinement in the common jail of Calcutta; and in anger and bitterness they questioned the authority of the judges to confine a man of Nandkumar's status and caste in the public jail.

On 8 May, Nandkumar informed the councillors that he could not perform his ablutions and religious rites in a place where he was shut up with people of different religions and castes.[3] Thereupon, the councillors asked the sheriff and the under-sheriff to wait upon Impey and inform him that the prisoner had refused to take sustenance for fear of losing his caste and ask for relief consistent with his safe custody.

Nandkumar was not confined in the jail with the ordinary prisoners. In fact the keeper of the jail, Mathew Yeandle, had quitted his own bedroom in order to accommodate him.[4] Also an

the heir of Bulaki Das, who accused Nandkumar of forgery before Hyde and Le Maistre, on 6 May, 1775. (*V.P., European Letter Book, Vansittart to Palk, 13 May, 1775, 84.*)

[1] Mohan Prasad was an up-countryman. He had been the manager of Bulaki's business for some time during thel atter's lifetime. In January 1769, Bulaki Das granted a joint power of attorney to Mohan Prasad and Padma Mohan.

[2] Vansittart's Indian Journal quoted in Sutherland, New Evidence on the Nandkumar Trial, *The English Historical Review*, Vol. LXXII, No. 284, July, 1957, 438-65. Thomas Farrer had arrived in Calcutta a few days before the arrival of the judges in October 1774. He was the first to be admitted as an advocate of the Supreme Court. Within a short period he acquired a fortune of about eighty thousand pounds, a considerable proportion of which he made as a counsel for Nandkumar. He left India in 1778 for England and afterwards became M.P. for Wareham. He gave his evidence in 1788 before the Committee of the whole House constituted to receive evidence on the motion to impeach Impey. (I.P. Vol. 16259, also *Memoirs of Hickey*, 153; Busteed, *Echoes*, 72).

[3] Secret Consults, 1775, R.A., Vol. 28, Letter of Nandkumar to the Council, 2136-38.

[4] Affidavit of Mathew Yeandle, Impey, *Speech*, 180-83.

adjoining room was given to the attendant of Nandkumar. The apartment given to Nandkumar, had no prison gate and no communication with the other people in the jail.[1]

However, Impey sent some pundits to examine the place of Nandkumar's confinement, and they reported that Nandkumar stood in no danger of losing his caste. Impey conveyed this to the councillors and added that there were many Brahmans employed by the Company, and many confined in the prison; if such concessions as claimed by Nandkumar were granted, the process of law would be defeated. In conclusion, Impey requested the Council to acquaint the prisoner with the fact that if he had any further applications to make for relief, he must immediately address the judges, who would give all due attention to his representation: "For should he continue to address himself to the Board that which will and can only be obtained from principles of justice may have the appearance of influence and authority. The peculiar turn of mind of the natives being to expect everything from power and little from justice."[2] Impey received a fretful reply to his letter. The majority members of the Council wrote that they were convinced that Nandkumar's representations were true, and asserted their right to receive any petition presented to them.

The import of Impey's letter was deliberately misconstrued. He had not asked the councillors to receive no petitions. He had simply requested them to ask Nandkumar to seek relief from the judges. Since Nandkumar was confined by the order of the court, a petition for relief should have been addressed to the judges.

The judges were quite sensitive to what the inhabitants of Calcutta thought and said, and Impey, in good faith, conveyed his impressions to the Council in his next letter. While explaining why he had asked them to direct Nandkumar to move the court if he needed any relief in the future, the Chief Justice wrote:

"The particular reason which called upon me in this case to make that requisition was the reports publicly circulated in this town that if the judges would not be prevailed upon to release the Maha Raja, he would be delivered by force."[3]

That such rumours were current in Calcutta in May 1775, is

[1] Deposition of Samuel Tolfree, the under-sheriff, Forrest, *Selections*, Vol. II, 370.

[2] I.P. Letter Book of Impey, Vol. 16265, 36.

[3] Secret Consults, 1775 R.A., Vol. 28, 2221.

supported by the affidavits of Alexander Elliot and Hercules Durham, made before Impey on 19 May, 1775.[1] In one of his letters to his sister, dated 17 May, 1775, Barwell declared upon his honour that "for these ten days past in most companies I have frequently heard it was a question whether General Clavering, etc., would not use force if other means failed to remove Nuncomar from the country prison".[2]

We have observed elsewhere that General Clavering, immediately after his arrival in Calcutta, was in favour of a "war with the judges", and a declaration against the establishment of the Supreme Court. At that time, Francis restrained him from attacking the court until there was "public ground for taking such a step". Since then the new councillors had been waiting for an excuse to attack the judges. The reason why they wanted to undermine the existence of the Supreme Court is simple. The Court operated as a check on an autocratic and oppressive exercise of executive powers. The new councillors wanted to be the new masters of India and detested the idea of a government by checks and balances. Hence arose their hostility towards the court. Moreover their tempers were suffering from their first encounter with the Indian summer. The month of May was otherwise unfortunate for Clavering. Barwell, who was a suitor of Clavering's daughter, quarrelled with the General on a public matter and exchanged abusive language, upon which General Clavering challenged him, and thus instead of a wedding there was a duel.[3]

Nandkumar's commitment must have added another irritant to Clavering's unrest. If he could think of using force against the Supreme Court in the winter of 1774, it is quite likely that he thought so again in May, 1775. However, the new councillors denied having ever thought of releasing Nandkumar by force and they sent to Impey, separate affidavits to the same effect.[4]

The tension was mounting. Hyde and Le Maistre, having come to know that their conduct in committing Nandkumar as justices of the peace, had been censured by the members of the Council in their proceedings on 8 May, asked the Council for a copy of their proceedings wherein their names might have appeared. The Council

[1] Impey, *Speech*, 97-99.

[2] *Bengal Past and Present*, Vol. XII, Letter No. 442, 17 May, 1775, 241.

[3] V.P. European Letter Book, Vansittart to Graham, 16 May, 1775, 96.

[4] Secret Consults, 1775 R.A., Vol. 28, 224-27.

refused to send them a copy, assigning several reasons, none convincing, each provoking. Hyde and Le Maistre renewed their requisition in their letter of 25 May and this time in a different style and language:

"We considered your not having offered us copies of those papers ...as an uncandid proceeding and a considerable aggravation of the secret injury which we conceive to be intended to us by those minutes...We shall hold every individual at your board who joins in such defamation as personally responsible to us, to the utmost extent of the law of England."[1] Indeed, the letter of the judges lacked moderation. But the reply sent by the Council was nearly in the same style as that of the judges:

"At all times, however, you may assure yourselves that we shall observe your conduct as magistrates with an attentive eye, and that we shall not be deterred by the menace, which you are pleased to hold out to us, from making a due representation to our superiors of every occurrence, which may appear to us to affect the welfare and good government of these provinces."[2]

On the above claim of the Council, Impey commented:

"Though the natives without question are under your general protection, they are more immediately so under that of the laws, one great end of the institution of our court is their protection, particularly against British Subjects vested with real or pretended authority. I have no doubt but the laws will be found to be in practice what they are universally esteemed in theory, a better security to this people than the discretionary power of any Council of State ...I think it my duty on the part of the judges to assert 'that there doth not reside in the Governor-General any legal authority whatsoever to revise and control any judicial acts of the judges done either in or out of court.'[3]

From the above correspondence that passed between the Council and the Court, it is clear that the commitment of Nandkumar occasioned a struggle for supremacy between them.

The Council claimed a general power to supervise the judicial conduct of the judges in general and their conduct as justices of the peace in particular, while the judges claimed absolute independence in their judicial conduct. Both parties felt aggrieved—judges, because their independence had been challenged and they

[1] Secret Consults, 1775 R.A., Vol. 29, pp. 59-62. [2] *Ibid.*, 64-65.
[3] I.P. Letter Book of Impey, Vol. 16265, 46-47.

had been refused copies of certain documents, and the majority members of the Council, because they could not change Nandkumar's place of confinement from a common jail to any other special place. Although some concessions were granted to Nandkumar on 10 May, they were granted by the Chief Justice and in such a manner that they could not be deemed to have been granted in compliance with the Council's instructions or as a result of their interference.

THE TRIAL AND EXECUTION OF NANDKUMAR, JUNE – AUGUST, 1775

The trial of Nandkumar for forgery started on 8 June, 1775, and lasted until the morning of 16 June. It was held in the old Mayor's Court.[1] The early proceedings are very briefly mentioned in the printed Trial, but more details can be gathered from Farrer's evidence given before the Committee of the whole House in 1788. These early proceedings of the trial throw light on two important questions: firstly, was Nandkumar under the jurisdiction of the Supreme Court; secondly, did the Act of 1729 which rendered forgery a capital offence and under which Nandkumar was indicted and tried, extend to India?

Farrer intended to make as broad a defence as possible—"to make the prosecutor fight his way, inch by inch; and to interpose every objection I could possibly devise".[2] He first put in a plea to the jurisdiction of the Court. The judges thought that the plea was unsupportable and Farrer withdrew it. There were two main reasons for the withdrawal of the plea.[3] According to the then existing law, if the plea to the jurisdiction was decided against as upon a record, then the defendant would be precluded from pleading not guilty to the indictment. Secondly, Farrer thought that he might avail himself of it later on by a motion in arrest of the judgement, if the judgement went against the defendant.

From this the accusers of Impey have inferred that the judges unjustly rejected the plea to the jurisdiction, that Nandkumar was not under the jurisdiction of the court because he was not an inhabitant of Calcutta when the offence was alleged to have been committed. Obviously, they have presumed that Farrer based his plea to jurisdiction on the grounds that Nandkumar was not an

[1] This building was pulled down in 1792.

[2] *Articles of charge*, 5-6. [3] *Ibid.*

inhabitant of Calcutta in 1770 when the offence was supposed to have been committed.

But their contention is ill-founded. The following extract taken from the draft clears all doubts about the inhabitancy of Nandkumar:

"And that at the time when the said offence in the said indictment contained is therein supposed to have been committed, and long before that time, and ever since, he, the said Maha Rajah Nandkumar, was resident...at Calcutta in the said province."[1]

The objection to the jurisdiction was in fact, based on entirely different grounds. It was alleged that before the advent of the Supreme Court, the Indians in Bengal were tried by their own men in their own criminal court and, as the offence was alleged to have been committed before the advent of the Supreme Court, Nandkumar in justice should be tried by Faujdari Adalat and not by the Supreme Court.

Immediately after the plea of jurisdiction was dropped by the prisoner's counsel, Chambers called for the indictment and after pursuing it for some time, proposed from the bench that indictment should be quashed, and that the prosecutor might be at liberty to prefer a new one under another law (5 Elizabeth I). Giving reasons for his motion, he stated that the Act of 1729 was particularly adapted to the local policy of England, where, for reasons as well political as commercial, it had been found necessary to guard against the falsification of paper currency and credit, by laws the most highly penal, that he thought the same reasons did not apply to the then state of Bengal.[2]

Impey, Hyde and Le Maistre could not agree with Chambers. Impey firmly believed first, that the Statute of 1729 did apply to India; second, that the English criminal law in general and the Statute of 1729 in particular had been administered in India by English courts that functioned before the advent of the Supreme Court; third, that the judges had no option to try forgery under any different law.

In support of his first point, Impey argued that when the King introduces his law in a conquered dominion, all such laws as are in force in the realm of England, at the time when the laws are so introduced, do become the laws of the dominion.[3] Laws made

[1] *Ibid.*

[2] *Ibid.*, 7. For 2. George II. see *Collections of charters and statutes*, Vol. 2, 69-70.

[3] Parl. Debates, 1788 Vol. 28, col. 1360.

subsequently may not extend to that new dominion, except when expressly mentioned in those laws that they shall. In 1726, King George I granted a Charter of Justice for the town of Calcutta, and thereby introduced the English law. On the surrender of that Charter, a new Charter of Justice was granted by King George II in 1753. It is, therefore, a legal consequence that all the criminal laws in force in England in 1753 thereby became the laws of the town of Calcutta. Since the Statute of 1729 was passed prior to the Charter of 1753, the Statute was extended to India by the Charter.

On the second point, Impey submitted that long before the erection of the Supreme Court, there had existed in Calcutta, Courts in the nature of Oyer and Terminer and Jail delivery. These courts had territorial jurisdiction over Calcutta and they administered English law. In order to prove that the Statute of 1729 was at least once applied before, Impey cited the case of one Radhacharan Metre. This man was indicted in 1765 for having forged the codicil of a will of one Cojah Solomans. He was sentenced to death.[1] The Court of Directors granted a pardon to the convict, but the pardon was granted mainly for lack of form in the indictment and "slender legal evidence to ground a conviction of the prisoner upon". It demonstrates that the Directors had no doubts about the applicability of the Act of 1729 in Calcutta.

Impey, therefore, considered it illegal to indict Nandkumar under the Statute of Elizabeth, as moved by Chambers, and not under the Statute of George II. He understood it to be an undoubted maxim of law that whenever a Statute constitutes that offence which was a misdemeanour to be a felony, the existence of the misdemeanour is destroyed and annihilated; as lawyers express it, the misdemeanour is merged in the felony.[2]

Explaining why Chambers wanted to quash the indictment, Impey stated that by a natural leniency of disposition, and thinking it optional in the court to adopt the Statute of Elizabeth instead of 2. George II, Chambers proposed that the indictment might be based on the former. There might have been another reason which Impey did not know of. As we shall see later, Chambers was on good terms with Francis, and the majority members of the Council confided in him. Since Nandkumar was the protégé of the

[1] General Consults, 11 March, 1765; also see Impey, *Speech* col. 43-45.

[2] Impey, *Speech*, 77-78.

new councillors, Chambers may have been induced by other considerations than only his leniency in attempting to quash the indictment. However, he readily acquiesced in the reasoning of Impey and concurred with his brethern in all the subsequent proceedings.

Whether the Statute of 1729 was introduced in India by the Charter of 1753, is still a controversial question. What is therefore material to our consideration is whether the judges in general and Impey in particular, did firmly and in good faith believe that the said Statute, and no other, was applicable in Nandkumar's case. If they did, then no criminal motive can be attributed to them. On the examination of the evidences we find that the judges reasonably believed that the only law under which Nandkumar could be tried for forgery was 2 George II. The first to conceive the application of that law was Le Maistre and Hyde, for, it was they who committed the accused under that law. Even Farrer, the counsel for the prisoner, admitted before the House that he should not have entirely concurred with Chambers as to the introduction of the 5 Elizabeth I but he was extremely happy to find that such a motion was moved by one of the judges, for, he was sure to make it a ground of appeal, if the judgement went against the prisoner, and he revealed his plan to the prisoner, and his friends—Monson, Clavering, Fawke and others.[1]

If the judges believed that the Statute of 1729, was introduced by the Charter of 1753, then it follows that Nandkumar was not tried under an *expost facto* law. Because the allegation that Nandkumar was tried under an *expost facto* law is based on the assumption that the Act of 1729 if at all it was introduced in India, was first introduced by the Charter of 1774.

We must now turn to the trial.

On being asked whether the parties wanted to challenge the jury, the prisoner challenged nineteen and the counsel for the crown, one. The panel of twelve jurors was finally sworn in; John Robinson was elected their foreman.[2]

As the Persian bond alleged to have been forged by Nandkumar

[1] *Articles of charge*, 8.

[2] Trial, 2. The panel of jury consisted of the following: Edward Scott, Robert Macfarlin, Thomas Smith, Edward Ellerington, Joseph Bernard Smith, John Robinson, John Ferguson, Arthur Adie, John Collis, Samuel Touchet, Edward Satterthwaite, Charles Weston.

is the most important document of the trial it is reproduced verbatim as follows:[1]

"I who am Bolauku Doss

"As a pearl necklace, a twisted Kulghah, a twisted Serpache, and four rings, two of which were of rubies and two of diamonds, were deposited by Rogonaut Roy Geoo, on account of Maha Rajah Nundocomar, Bahader, in the month of Assar, in the Bengal year 1165, with me, in my house at Moorshedabad, that the same might be sold; at the time of the defeat of the army of the Nabob Meer Mahomed Cossim Cawn, the money and effects of the house, together with the aforesaid jewels, were plundered and carried away. In the year 1172, Bengal style, when I arrived in Calcutta, the aforesaid Maha Rajah demanded the before mentioned deposit of jewels; I could not produce the deposit when demanded, and, on account of the bad state of my affairs, was unable to pay the value thereof; I therefore promise and give it in writing, that when I shall receive back the sum of two lacks of rupees, and a little above which is in the Company's cash at Dacca, according to the method of reckoning of the Company, I have agreed and settled, that the sum of forty-eight thousand and twenty one sicca rupees is the principal of the amount of the said deposit of jewels, which is justly due by me, and over and above that, a premium of four annas upon every rupee. Upon the payment of the aforesaid sum from the Company's cash, I will pay that sum, without excuse and evasion, to the aforesaid Maha Rajah. I have, for the above [Sic] of a bond under my signature, that when it is necessary it may be carried into execution.

"Written on the seventh day of the month of Bhadoon, in the Bengal year 1172".

It is witnessed Alabd Bolankee Doss

It is witnessed Mehab Roy.

It is witnessed Seilaubut the Vakeel of Seat [*Seth*] *Bolankee Doss.*

It is witnessed Abdehoo Commaul Mahomed

According to the above bond, sometime in 1758, Nandkumar deposited with Bulaki Das, certain jewels for sale. Sometime in 1763 or 1764, the property of Bulaki Das at Murshidabad was plundered and the jewels together with his other belongings were carried away.

On Bulaki's return to Calcutta in 1765, Nandkumar asked for

[1] *Ibid.*, 8-9.

his jewels. Since Bulaki was in a bad financial state he could not pay Nandkumar for the lost jewels. But Bulaki was expecting to get over two lakhs of rupees from the East India Company. Hence he executed the above bond on 20 August, 1765, promising to pay to Nandkumar over forty-eight thousand rupees from the amount of money he was supposed to receive from the Company.

On what account was Bulaki to receive money from the Company? There are two possibilities. Perhaps Bulaki lent this sum of Rs. 230,000 to the Company, shortly after the outbreak of the war with Mir Kasim, or the Company agreed to pay him that sum as a compensation for having confiscated his property during the war with Kasim Ali. Whatever might be the origin of the debt, this much is certain, that Bulaki asked for its payment in August 1765. His demand appeared on the consultation of 12 August, 1765. The Calcutta Council does not seem to have taken any action until the end of 1768. Bulaki first petitioned the Court of Directors and later in 1768, sent one M. Van Colster to England to solicit the payment of the money.[1] The Court of Directors asked their Calcutta Council, first through their letter of 21 November, 1766, then of 11 November, 1768 and finally of 17 March, 1769, to inquire into Bulaki's claim.[2] Bulaki died in June 1769, about six months before the payment was actually made by the Company in December, 1769 to his executors. About the time of his death or immediately after his death it must have become pretty certain that the Company, after all, was going to pay him the said amount. But before the beginning of 1769, and particularly in the month of August, 1765 (when the bond was executed), Bulaki may have had very little hope of receiving the payment of the said sum. Whether Nandkumar could accept such a bond, under which the payment was promised on the happening of a remote contingency is doubtful. Further, Bulaki was under no legal obligation to pay for the lost jewels, because Hindu law does not hold a depositary responsible for the loss of deposits if they were placed in the same security as his own and were stolen or damaged with his own goods.

From these two sets of facts, two opposite inferences can be drawn. One can suspect the genuineness of the bond because it was unusual. In the first place, Bulaki was not legally bound to pay for the lost

[1] Copy of the 84th para of the Company's general letter to Bengal, dated 21 November, 1766, quoted in Bolts, *Considerations on Indian Affairs*, Part II, Vol. II, 581. [2] *Ibid.*

jewels. In the second place, Nandkumar was less likely to accept a promise, the fulfilment of which depended upon a very remote possibility. One may, therefore, infer that the bond was forged by Nandkumar after the death of Bulaki—sometime during the period between June and November, 1769, when the payment from the Company was expected with all certainty.

On the other hand, one may argue that since Nandkumar knew that Bulaki was not bound to make good the loss of his jewels, he accepted such a conditional bond. The bond in fact revived in him a lost hope; and Bulaki's intention in giving such a bond to Nandkumar might have been to induce the latter to secure the payment of Rs. 230,000 from the Company.

In order to establish, therefore, whether the bond was genuine or forged, we need to examine further the evidence that was produced on trial by both the prosecution and the defence.

The counsel for the crown produced altogether nine witnesses, excluding those who were sworn in to prove official documents and public transactions. Evidence was given to prove the following main points:

A. That the seal of Bulaki Das and the signature of Silabat were forged.
B. That the seal of Kamal was affixed without his knowledge and consent.
C. That in 1765 when the bond was alleged to have been executed, the financial condition of Bulaki Das was sound, hence it is quite improbable that he should have given such a bond.
D. That from the letter of Bulaki Das granting power of attorney jointly to Mohan Prasad and Padmmohan Das, and dated in the year 1768, more than two years after the alleged date of the execution of the bond, it appears that he was at that time indebted to Nandkumar only in the sum of Rs. 10,000.
E. That Bulaki Das never mentioned to anybody the deposit of the jewels or their loss and there is no entry of it in his books.
F. That Nandkumar knowing the bond to be a forged one, uttered it and received payment on it.

The prosecution did not furnish any direct evidence to prove that the seal of Bulaki Das and the word 'Alabd' purporting to

be in his handwriting were forged. Mohan Prasad deposed that Bulaki Das did not write, read or understand Persian; suggesting an inference that it was unlikely that he caused the bond to be written in Persian.[1] He further deposed that the jewellers in Calcutta did not seal a bond, they signed it. Another prosecution witness, Raja Nubkissen, when asked what were the customary ways of authenticating a document said, that writing 'Alabd' and affixing the seal under it was mostly practised by Mogul Mussalmans.[2]

In order to prove that Silabat's signature was forged, the prosecution produced one Sabut Pathak who deposed that he had lived with Silabat since his childhood and was well familiar with his seal and signature and that the signature of Silabat on the bond, was not in Silabat's handwriting.[3] Being asked whether he had ever seen Silabat attest any bond, he said, once when he had gone with Silabat to Jagarnath he saw him affix his seal on a receipt for money given him by Bulaki Das. It is hard to believe that Sabut Pathak could remember the impression of Silabat's seal and signature when he happened to have seen them once only many years back. It is equally doubtful whether Silabat, who was the Vakil of Bulaki Das, would give him a receipt duly signed and sealed for a little sum of money. However, when several papers were shown to this witness, he rightly selected three as being in the handwriting of Silabat. Raja Nubkissen, likewise denied that the signature of Silabat on the bond was genuine, and pointed out to those three papers, which were picked up by the previous witness, to be in the handwriting of Silabat.

To prove that the seal of Abdul Muhammad Kamal was affixed on the bond by Nandkumar without his knowledge and consent, the prosecution produced Kamaluddin Khan, who deposed that his original name, Abdul Muhammad Kamal was changed to Kamaluddin Khan by a Royal title. Though the title was granted to him at the time when "King and Colonel Coote were at Patna", it was formally conferred upon him by the Nawab Nutchum-al-daulah, ten or fifteen days before Reza Khan was appointed Naib Subah. The seal on the bond was his old seal, which he on one occasion, "fourteen or fifteen years ago, when war between Jaffier Ally and Cossim Ally Khan subsisted", had sent to Nandkumar so that

[1] *Trial*, 22. [2] *Ibid.*, 27.

[3] *Ibid.*, 28-30. As deposed by Mohan Prasad, Silabat died in 1767, two years before the death of Bulaki Das whose Vakil he was.

a petition in his name could be presented to the Nawab by Nandkumar, and, Nandkumar never returned his seal though requests to that effect were frequently made to him. The witness produced a letter which Nandkumar had written to him after the receipt of his letter and seal. The letter does not acknowledge the receipt of the seal but it refers to the letter and the 'nazzer' Kamal had sent to Nandkumar. From the printed trial it appears that the prisoner's counsel admitted that letter to be Nandkumar's. But Farrer, while being examined by the Committee of the whole House, deposed —"This part of the printed trial is to me quite unintelligible—I am stated to have offered to admit that Nandkumar had the letter —there is no evidence stated of any letter being written to him".[1] Kamal further deposed that it was through Mohan Prasad that he first came to know that his seal was affixed to that bond. Then he went to Nandkumar who told him: "It is true; having confidence in you I have fixed your seal, which was in my possession, to the bond of Bollakey Doss. Having sworn, you will give evidence of this before the gentlemen of *Audaulat*".[2] Kamal produced a paper sealed with his old seal and bearing his original name. The jury compared this with the impression on the bond and thought them to be the same; each of the impressions showed a small flaw which was in the original seal.

We have already examined Kamal's depositions in the conspiracy case and found that they do not bear the mark of truth and are mostly concocted. Here again it can be observed that his story suffers from certain improbabilities. According to his own version the Royal title was granted to him when "King and Coote were at Patna"; that means in the year 1761. And he did not use the title until it was formally conferred upon him by the Nawab "ten or fifteen days before Mahomed Reza Cawn was appointed Naib Subah"; which means not later than February or March 1765. We find that the bond purports to have been executed in August 1765. Supposing that the bond was forged, even then it might not have been forged earlier than August 1765; in all probability it was forged after the death of Bulaki Das which occurred in 1769, for, Nandkumar would not forge such a bond in the life time of Bulaki Das unless he was certain as to when Bulaki Das was to die and when the Company was to pay his debts. In any

[1] Impey, *Speech*, 161. [2] *Trial*, 11.

case the bond, if forged, was forged after Kamal had started using his new title and new seal and Nandkumar knew all about that, for it was Nandkumar, as Kamal alleged who had delayed the formal conferring of the title upon him by the Nawab. Why did Nandkumar use the obsolete seal of Kamal? This is a point for conjectures. Perhaps Nandkumar thought that the document would appear genuine if it was sealed by the old seal of Kamal, for the old seal was used by Kamal in the first few months of 1765. But it is hard to believe that Nandkumar would use Kamal's seal without the concurrence of the latter. According to his own version, it was some time in 1772 that Kamal learnt from Mohan Prasad that his seal was used by Nandkumar on a forged bond. Kamal went to Nandkumar and flatly told him that he would not swear before the *Adalat* as to his seal on the bond. Nandkumar then refused to be Kamal's security in a certain contract for Tecca Colliaries. That should have brought about the final rupture between Kamal and Nandkumar. It was at that time in 1772 that a civil suit had been instituted against Nandkumar for the recovery of a certain sum of money which Nandkumar was alleged to have received on the same Persian bond which bore the seal of Kamal. Kamal should have gone to the *Adalat* and given evidence against Nandkumar. At any rate, he should have severed all connection with Nandkumar. But we gather from his depositions in the conspiracy case, that he maintained his former intimate relationship with Nandkumar until the end of 1774. He had gone to Nandkumar for a loan of money; he had deposited with him his petition against Ganga Govind Singh. From this it can be inferred that if Kamal's seal was used in forging a document, it was used with Kamal's concurrence.

In order to prove that in 1765 the financial condition of Bulaki Das was not so bad as to occasion the writing of a bond for such a sum as mentioned therein, the prosecution tried to prove by an entry in the book of Bulaki Das, that he was solvent enough to draw a draft in favour of Clive for a lakh of rupees.[1]

The letter of Bulaki Das, dated in the year 1768, granting power of attorney jointly to Mohan Prasad and Padmmohan Das, and giving a brief account of some of his outstanding debts and credits, was produced by the prosecution to prove that at that time Bulaki Das was indebted to Nandkumar in the sum of Rs. 10,000 only.[2]

[1] *Ibid.*, 23. [2] *Ibid.*, 16.

Although the statement had been prepared by guesswork, it is improbable that such a large sum as Rs. 48,021, for which the bond was executed in 1765, might have escaped the memory of the writer, especially when we find on the debt-side the entry of such small sums as Rs. 506.[1] This indeed was a very formidable document and taken upon its face value it did cast indelible reflexions on the genuineness of the Persian bond.

Coming to the last point, it was Mohan Prasad, the prosecutor, who deposed as to when and where and under what circumstances the bond was produced by Nandkumar and payment received thereon. The letter of Nandkumar acknowledging the receipt of the payment was produced in evidence.[2] As the receipt of payment was not disputed by the defence, it is needless to enter into any detail on this point. We shall have occasion to examine the deposition of Mohan Prasad when discussing the summing up of the evidence by Impey. We, therefore, must turn now to the defence case.

Durham, the prosecuting-counsel, closed his case on 11 June and Farrer then opened the case for the defence, producing eighteen witnesses to depose among others to the following main points:

A. The bond was executed by Bulaki Das and his seal on the bond is genuine.
B. The bond was authenticated by three witnesses who are now dead.
C. There is a letter in Bulaki Das' handwriting, admitting the bond and the circumstances of the jewels.
D. There is an account signed by Mohan Prasad and Padmmohan Das, in the presence of Ganga Bissen, in which reference is made to the bond-money.
E. The prosecution is false and malicious.

It may be observed that the bond purports to have been authenticated by three witnesses, namely, Mehtab Roy, Silabat and Kamal. The prosecution denied any knowledge of Mehtab Roy and tried to prove that the signature of Silabat on the bond was a forgery and the seal of Kamal was affixed without his knowledge and consent. The defence produced Tyagi Roy and Rupenarain Chau-

[1] *Ibid.* [2] *Ibid.*, 27.

dhari to prove that Mehtab Roy was a real person who died sometime in 1772. Tyagi Roy, who professed to be the son of Saheb Roy and grandson of Bangulal, deposed that Mehtab Roy was his elder brother who died in 1772 at the age of thirty-three, that Kashinath and Hazurimal knew Mehtab Roy, and his brother had once gone to Burdwan with Kashinath.[1] Hazurimal and Kashinath were summoned, probably on the initiative of the court. Hazurimal deposed that about ten years ago he knew one Mehtab Roy who was nearly fifty at that time.[2] Kashinath deposed that he knew one Mehtab Roy who was the son of Bangulal (not of Saheb Roy as deposed by Tyagi Roy), and that Mehtab Roy whom he knew would be of fifty if alive; he did not know any other Mehtab Roy, but he knew one Bangulal of Mancor of whose details he was unaware.[3] Thus we find that the Mehtab Roy of Tyagi differed in age and parentage with the Mehtab Roy of Huzurimal and Kashinath.

The defence produced a set of four witnesses, namely, Jaideo Chaube, Chaitnyanath, Lollau Doman Singh and Yar Muhammad, who had seen the bond being executed by Bulaki Das and witnessed by Mehtab Roy, Silabat and Kamal.

Jaideo Chaube, Chaitnyanath and Yar Muhammad deposed that when Bulaki Das came to Nandkumar's house in Calcutta, Nandkumar asked him for his money, whereupon Bulaki told him that he was almost destitute and entreated him to accept a bond instead, to which Nandkumar finally agreed.[4] Bulaki Das then asked Kamal and Jaideo Chaube to accompany him to his house where he would write the bond in their presence. Chaitnyanath and Yar Muhammad joined them and they all went to Hazurimal's house where Bulaki was living. There they saw Silabat, Mehtab Roy, a Munshi of Bulaki, and Bulaki himself sitting together. The bond was then written by the munshi, sealed by Bulaki, then attested by Kamal, Mehtab and Silabat. When it was duly executed it was given to Kamal to be carried to Nandkumar.

The very completeness of the story as narrated by these four witnesses makes it highly incredible. Each one of them repeated the same story, in the same style, and almost in the same language, as if they had learned by rote everything they had to say. They remembered approximately the amount of the bond-money, and

[1] *Ibid.*, 35-37. [2] *Ibid.*, 37. [3] *Ibid.*, 37-39. [4] *Ibid.*, 40-44, 48-52, 67-77.

they remembered the order in which all were sitting in the room while the bond was being executed, and the order in which the bond was attested. They remembered the position of the inkstand, the time of day when the bond was executed, and many such minute details which ordinary human memory is unlikely to retain after such a long period as ten years. And what they did not remember is more surprising. They did not remember the name of the munshi and the name of the month in which the bond was written. They remembered alike and forgot alike. One incident in particular renders their testimony highly improbable.

When asked to repeat what passed between Bulaki and Nandkumar in the house of the latter, Yar Muhammad declined to answer. When pressed again and again he said:

"If I begin at the beginning I can tell, I can not begin in the middle."[1] Thereupon, the court allowed him to begin again. He repeated a paragraph of what he had said before. Obviously, this must have gone far to convince the judges and the jury of perjury by these witnesses. It can be also seen that they were dependants of Nandkumar. On his cross-examination, Yar Muhammad confessed that for the last ten or fifteen years he had been in Calcutta with Nandkumar. Lollau Doman Singh was at that time in the service of Radhacharan, the son-in-law of Nandkumar. Chaitnyanath admitted that he had been in the service of Nandkumar and Nandkumar had promised to employ him again when he himself got a job, which he was expecting. Jaideo Chaube was a Brahman by caste and moved around Nandkumar.

Jaideo Chaube and Yar Muhammad further deposed that Abdalu Kamal was a different man who died nearly six years ago.[2] Jaideo Chaube one day saw people carrying a dead man, and on asking whose body it was, of a Hindu or Mussalman, was told that it was the body of Kamal.[3] It may be observed that the manner of carrying the dead body of a Mussalman is different from that of a Hindu and an Indian hardly needs to be told whether a Hindu or a Mussalman is being carried. After having made this statement, Jaideo wanted to retract or disown it. That might have further prejudiced the court against his testimony.

In order to prove that Bulaki's seal on the bond was genuine, the defence produced Mir Ausad Ali. This witness deposed that in

[1] *Ibid.*, 69. [2] *Ibid.*, 47-48, 67. [3] *Ibid.*

1764 he was ordered by Kasim Ali Khan to carry some treasures to Bulaki Das. Accordingly he conveyed the treasures to Bulaki at Durgavati. Bulaki gave him a receipt under his seal. The witness produced the receipt in the court. The impression of Bulaki's seal on the receipt was similar to that on the bond. The receipt was dated 8 October, 1764.

Where was Bulaki staying in October, 1764? Was he really at Durgavati as deposed by Ausad Ali? Kissen Jaun Das was examined on this point. He deposed that from a month before the battle of Buxar (23 October, 1764) Bulaki was with the army of Kasim Ali at Buxar, that the deponent was with Bulaki during those days, that he did not know of any such treasure received by Bulaki from Kasim Ali and he had made no entry concerning them in any of Bulaki's books.

In order to prove that Bulaki Das himself had admitted the bond and the circumstances of the jewels, the defence produced letters purporting to be of Bulaki Das. These letters were placed in three separate open covers with the seal of Bulaki affixed on each cover. The court rejected them as evidence, observing: "there being no signature from Bollakey Doss to the papers enclosed, nor any proof, whose hand-writing they were, or that those papers were originally enclosed in the envelopes; because, if they were allowed to be given in evidence, they might impose what papers they pleased on the court, by putting them into the envelopes".[1]

It was on 14 June that Kissen Jaun Das deposed to the famous '*kararnama*'. When asked, had he seen, in Bulaki's handwriting, any paper concerning his accounts with Nandkumar, he said that once, while drawing up the accounts of *rozanama* (day to day account book) he asked Padmmohan for an account of the jewels for which the bond-money had been paid to Nandkumar. Padmmohan showed him a *kararnama* (an agreement in writing) which was signed by Bulaki Das. This *kararnama* referred to the jewel-bond. Thereupon, from that document the deponent made an entry in the books of Bulaki Das, giving credit to Nandkumar for a sum of Rs. 69,630-7 a., corresponding with the particulars of the jewel-bond.

Since the beginning of the trial the court had been very much impressed by Kissen Jaun Das. But on 15 June the court suspected

[1] *Ibid.*, 59.

him of perjury. On that day, at the instance of the prisoner, Kissen Jaun Das was further examined on the *kararnama*. He then deposed that Mohan Prasad took him to the house of Nandkumar; Nandkumar showed him the *kararnama*, and Mohan Prasad was present while the deponent read it. The previous day the witness had said that Mohan Prasad did not know of the *kararnama*. Now he made the grand revelation that Mohan Prasad knew of it. On being asked why he did not state it the previous day, he told the court that he was afraid of Mohan Prasad, and Mohan Prasad had asked him not to disclose anything about the *kararnama*. On cross-examination he lost his previous boldness, simplicity and confidence and started wavering and retracting. The impression he gave to the court was that of a perjured witness and evidence was given to show that he had been influenced by Nandkumar on the previous night.

The *kararnama* itself was not produced on the trial. The defence tried to produce a copy which the court would not accept.[1]

Strong suspicion was aroused about the authenticity of the *kararnama*. According to Kissen Jaun Das, it was written by Padmmohan Das and signed by Bulaki Das. As we shall see later, Padmmohan Das was a privy to the forgery. It is likely that Padmmohan might have forged the signature of Bulaki or written the statement over a genuine signature. But this line of argument is based on the presumption that Kissen Jaun Das actually saw the *kararnama*. It is quite possible that he had not seen such a document. It was proved in the court that on the night of 14 June he was influenced by Nandkumar's men at the house of Jarret.[2] It may be further asked, why the original was not produced by the defence. The original, if it existed, should have been in the possession of Nandkumar. Further, if we look at the original plan of defence, we find that the defence-counsel had not intended to give evidence on the existence of the *kararnama*. It was an episode which was not planned or conceived before 14 June.

Supposing that it was genuine, what then did it prove? Did it prove that the Persian bond was genuine? We may briefly examine its contents.

In the *kararnama* (dated 1769) Bulaki Das makes an agreement with Nandkumar as to different sums of money, which Bulaki would

[1] This copy is reproduced verbatim by Beveridge in his 'The Trial of Maharaja Nanda Kumar', 71-72. Perhaps it still exists in the Calcutta High Court.

[2] *Trial*, 108.

like to pay to different persons, when he would receive Rs. 230,000 from the Company. For example, if the Company pays him both the principal and the interest, he would give half of the amount to the Governor and others. Then he vaguely mentions the jewel-bond. In case he receives both the principal and the interest, then —"I am not able to pay the whole interest specified in your bond for the jewels, but I will give a fourth part of that interest". In case he receives the principal only, then—"Respecting the bond of jewels, I am accountable for it: it will not be in my power to pay the interest, I will, without fail, pay the principal".

These are the two references made in two different contexts to the jewel-bond. Two points must be noted. First, the amount of the jewel-bond is not mentioned. Second, reference is made to the "interest" as specified in the jewel-bond. In the Persian bond itself no mention is made of the interest. In the Persian bond, Bulaki agrees to pay a sum of Rs. 48,021 plus a premium of four annas upon every rupee.

If the *kararnama* is genuine then it refers to a jewel-bond which is not identical with the Persian bond. It does not, therefore, conclusively prove that the Persian bond, alleged to have been forged by Nandkumar, was genuine. But it does prove that there existed a jewel-bond. If there was a jewel-bond then it was certainly for a lesser amount of money. Could it be for a sum of Rs. 10,000? Here we may refer to the letter of Bulaki Das, dated in the year 1768, granting power of attorney, jointly, to Mohan Prasad and Padmmohan Das, and giving a brief account of some of his outstanding debts and credits. According to this letter, Bulaki Das owed Rs. 10,000 to Nandkumar. None of the witnesses threw any light on the origin and nature of that debt. Was that amount due to Nandkumar on account of a jewel-bond? If so, then Nandkumar forged the Persian bond to get more money than what was due to him. We will examine later why, if at all, the Persian bond was forged. Here it would suffice to observe that the *kararnama* story, even if true, does not prove the innocence of the accused.

'Exhibit M' being an account of Bulaki Das, signed by Padmmohan and Mohan Prasad, and containing an entry of the bond-money, was produced by the defence to prove that Mohan Prasad had himself acquiesced in the payment of the bond.[1] Mohan Prasad

[1] *Ibid.*, 46-47.

being examined on Exhibit M, deposed that he was persuaded by Padmmohan to sign that account and his signing the document did not mean that he consented to the forgery, for, Exhibit M was an account of the money already paid to the creditors of Bulaki Das.

The defence produced Manohar Munshi to depose that Mohan Prasad had tried to suborn him.[1] Manohar stated that three days before the commitment of Nandkumar, Mohan Prasad showed him the bond and asked whether it was in his handwriting. When the deponent replied in the negative, Mohan Prasad asked him to find out a man who could depose that it was in his handwriting. A day or two afterwards, Durham showed Manohar the Persian bond and two other papers and asked him whether they were written by him. He denied it whereupon Durham asked for certain Persian papers written by the deponent; compared them with the bond and observed that the Persian bond was not in Manohar's handwriting. Mohan Prasad denied having met Manohar Munshi three days before the commitment of Nandkumar. Durham, the counsel for the prosecution, did admit having met Manohar three days before Nandkumar's commitment (not two days as deposed by Manohar) and asked him whether the bond was in his handwriting. The statement of Manohar Munshi, is indirectly supported by certain entries made by Vansittart in his 'Indian Journal'.[2] From these entries made during the latter part of April and first week of May, 1775, it can be inferred that the Persian bond was for some time with Mohan Prasad and then with Durham and that Mohan Prasad believed that the bond was written by Manohar Munshi. It is, therefore, quite possible that Mohan Prasad went to Manohar to find out whether it was he who drafted the bond for Nandkumar. The nature of the entries and the fact of their being made in a highly confidential private journal, suggest that Mohan Prasad, Vansittart and men of their camp believed that the bond was a forgery. If the prosecutor was led to believe, no matter whether rightly or wrongly, that the bond was a forged one, the prosecution could not be said to be malicious.

So much for the defence case. Looking at the witnesses produced

[1] *Ibid.*, 89-91.

[2] Vansittart's Indian Journal, quoted in Sutherland, 'New Evidence on the Nandkumar Trial', *The English Historical Review*, Vol. LXXII, No. 284, July 1957, 452.

by the defence, we are struck by the non-appearance of two important persons, viz. the widow of Bulaki Das, and Ganga Bissen. The widow was alive and living at Banaras. As Banaras was out of the jurisdiction of the Supreme Court, she could not be summoned by the Court. Neither of the parties to the trial seem to have tried to obtain her appearance in the court. If Nandkumar's story were true, he should have tried his best to secure her appearance, for she must have known the truth about the Persian bond.

Ganga Bissen was living in Mohan Prasad's house, ill and confined to bed. Le Maistre suggested that he might be brought in the court on a cot. Since Ganga Bissen had a great interest in the estate of Bulaki Das, the court held that the prosecution would not be entitled to call him. Fearing that he was living under the influence of Mohan Prasad, the prisoner at first hesitated to call him, but afterwards, at the desire of the jury, consented to call him. The court sent Dr. Williams and Starke to examine him and report. They reported that Ganga Bissen feared death if he were taken into the court.

The trial being closed, Impey started summing up the evidence for the jury.

Did Impey, as alleged by his accusers, misconduct himself during the trial of Nandkumar by severely cross-examining the defence witnesses?[1] Was he partial in his summing up the evidence, "discrediting the witnesses for the defence and hardly touching upon the credibility of the witnesses for the prosecution"?[2]

With regard to the first question, it is a fact that the defence witnesses were severely cross-examined by the judges, but they were so examined "by Mr. Justice Le Maistre principally, Mr. Justice Hyde next, and Sir Elijah Impey least of all".[3] The reasons for the severe cross-examination by the judges were mainly two.[4] Firstly the defence story was highly suspicious. Secondly, the prosecuting counsel was unequal to the task of cross-examining defence witnesses. The judges, therefore, thought that the purposes of justice would suffer if they did not cross-examine.

As for the summing up we do not find Impey unduly prejudiced against the defence story. On the contrary, we find him very lenient

[1] *Articles of Charge*, First Charge, 5-6. [2] *Ibid.*

[3] *Ibid.*, Farrer's deposition before the Committee of the Whole House, Minutes of Evidences, 11.

[4] *Ibid.*, 11-13.

in allowing the defence counsel to submit his observations on the evidence to the jury. By the laws of England, such observations could not be made direct to the jury by the counsel of a prisoner, who was charged with felony.

He does not seem to have underlined even the most formidable evidence, which was produced by the prosecution to prove the guilt of the accused. On Bulaki's letter, granting power of attorney, which was produced by the prosecution to prove that Bulaki was indebted to Nandkumar to the sum of Rs. 10,000 only, Impey commented: "but I think no great stress can be laid on that, as it contains a reference to such other debts as may appear by his books". The fact that Bulaki had lent to Clive in 1765, a lakh of rupees, did not strike Impey as a significant evidence to show the unlikelihood of his having given, in the same year, a bond for Rs. 48,021 to Nandkumar. On this he commented: "...a much larger sum would no doubt have been paid on Lord Clive's credit alone; and it is certain that Bollakey Doss was at that time a debtor to Maha Rajah Nandkumar".

We have already observed that the defence witnesses were highly perjured. The defence had failed to establish any point. Its story about the execution of the bond was too tidy to be true. The identity of Mehtab Roy could not be established. It failed to establish the existence of a different Kamal. Impey, therefore, was convinced in his mind that the defence story was false and the prisoner was guilty of the forgery.

As a reaction against this perjury and falsity on the side of the defence, his belief in the prosecution story was strengthened, and, in consequence, he placed too much trust in Mohan Prasad and Kamal.

According to his own depositions made in the court, Mohan Prasad knew that only Rs. 10,000 were due from Bulaki's estate to Nandkumar. A period of about three weeks intervened between the payment of Bulaki's money by the Company and the payment of bond-money to Nandkumar. During this period, Mohan Prasad knew that a much larger amount than Rs. 10,000 was demanded by Nandkumar. He was present when the payment was made to Nandkumar on the Persian bond. Why did he acquiesce in the payment? Could a man, who from the beginning was so suspicious about Nandkumar's bonafides, become so devoid of curiosity as not even to ask why and on what account the payment was made

to Nandkumar of a sum larger than that which he knew justly belonged to him? It may be recalled that Mohan Prasad was one of the attorneys appointed by Bulaki in his will. He had every right and reason to oppose the payment until he was told on what account it was being made. His silence amounted to an acquiescence in the commission of the crime.

As for Kamal's story, we have already observed that it is unlikely that Nandkumar affixed his seal on the bond without his concurrence.

A further lack of balance is noticeable in Impey's analysis of the depositions made by Kissen Jaun Das. This witness, who had impressed the court all through the trial, suddenly on 15 June, turned out to be a perjurer. Quite naturally, Impey was shocked. He should have then rejected all his statements made during the trial. Or, if he believed that the witness had come under the influence of Nandkumar's men only on the night of 14 June, then he should have rejected only his second version of the *kararnama* story which was made on 15 June. But we find that Impey disbelieved Kissen's two versions of the *kararnama* story without doubting further the truth of his previous statements made during the trial. It may be recalled that this witness had proved during the trial, many facts for the prosecution. He had verified the signature of Bulaki Das on the letter granting power of attorney. He had deposed that during the stormy days of 1764 he was with Bulaki Das and that he did not know of any treasure conveyed to him by Ausad Ali. He had further deposed that Silabat knew Persian. On the basis of his deposition, Impey argued in his summing up that when Silabat knew Persian, why would Bulaki ask for a Persian writer to write the bond? The defence had submitted that besides Bulaki, Silabat, Kamal and Mehtab Roy, there was also present a Persian writer when the bond was executed. The whole story about the loss of jewels, as put forth by the defence, was refuted by Kissen Jaun Das, who deposed that he never heard of such a loss; had it happened, he must have heard it; and a thousand people must have known it. This statement was made by him on 14 June, the day he gave the first version of his *kararnama* story. If his *kararnama* story was disbelieved, his other statements made on the same day should also have been censured.

Though Impey was convinced of the prisoner's guilt, yet, he does not seem to have conveyed his conviction to the jury. Concluding

his summing up of the evidence, he asked the jury to give the benefit of the doubt to the accused:

> "...as there can be nothing of equal value to life, you should be thoroughly convinced, that there does not remain a possibility of innocence before you give verdict against the prisoner."[1]

The jury retired for about an hour and brought in their verdict of "guilty".

We may now turn to give a brief account of the post-trial events leading to the execution of Nandkumar.

Farrer and his assistant, Brix, planned first to move the court in arrest of judgement.[2] If that failed, then a petition of appeal was to be filed. If the court rejected the petition for appeal, then the counsellors were to petition the court for respite.

On "22 or 23 June", Farrer moved the court in arrest of judgement. The motion stated that according to the laws of England the Persian bond was neither a bond, writing obligatory, or promissory note.

The court rejected the motion. The Chief Justice remarked that it was unnecessary to determine whether it was either a bond or promissory note; he was of the opinion that it was one or the other. The Chief Justice, therefore, passed sentence of death on the prisoner.

The next move was to draft a petition for appeal. The counsellors could give no legal reason nor could they venture to say that the verdict was contrary to evidence, especially when the court had ordered several of their witnesses to be indicted for perjury. Therefore, they decided to make the petition general, relying upon the Charter, which had granted the court discretionary power to allow or refuse appeals in criminal cases without requiring particular legal reasons to be set forth. They stated in the petition that the prisoner being a Hindu native of Bengal and ignorant of English law, had not defended himself as fully as a British subject, in a similar case, would have done.[3]

This petition was rejected by the court for its being general and not mentioning any specific reason for appeal. The court further added that the prisoner could not plead ignorance of English law,

[1] *Ibid.*, 118. [2] *Ibid.*, 15. [3] *Ibid.*, 17-18.

which rendered forgery a capital offence, for he ought to have known the case of Radha Charan Metre.

The only course left to the counsellors was to secure applications and recommendations for respite. An application was drafted in the name of the jury. Robinson, the foreman, declined to sign it.[1] Only one of the jurors, Edward Ellerington, came to Farrer's house and signed the petition. The petition, therefore, was not presented to the judges.

Farrer then decided to present an application through the Governor-General and Council. Before presenting the petition formally to the Council, he met the new councillors at a party at Monson's house and conversed with them on the subject. Francis agreed, but Monson and Clavering refused to recommend such a petition to the judges. In Farrer's own words—"the General, without hesitation, peremptorily refused, assigning as a reason that it was a private transaction of Nandkumar's own, that it had no relation whatever to the public concerns of the country, which alone, he, the General, was sent out to transact, and that he would not make any application in favour of a man who had been found guilty of forgery".[2] Therefore, the application to the Council was never sent.

Two other petitions were sent to Farrer by Fawke; one was in the name of Sambhunath Roy, who for the first time was reported to Farrer as Nandkumar's brother, and the other was in the name of the inhabitants of Calcutta, Murshidabad, and other places. Farrer advised against sending Sambhunath's petition to the court; the other petition could not get many subscribers.[3]

The only petition which could be presented to the Chief Justice in person or left at his house, was one from Radhacharan, Nandkumar's son-in-law.[4]

On 27 June, the Council received the Nawab's letter, recommending a suspension of the sentence until the pleasure of His Majesty

[1] *Ibid.*, 19-20. [2] *Ibid.*, p. 22.

[3] In Vansittart papers there is an account of persons who signed a petition in favour of Nandkumar (Add. Mss 48370). According to this account, the petition was signed by 63, of which 25 were inhabitants of Calcutta and 38 of Burdwan and Hoogli. Of the 25 inhabitants of Calcutta, 9 were Brahmins and the rest of low castes. Of the 63 subscribers, most were men of no substance and of doubtful character and a few of them were relations of Nandkumar.

[4] *Articles of charge*, 22.

was known.[1] The Council forwarded this letter to the Supreme Court.

Finally, it was Nandkumar's turn to invoke the aid of his patrons. He wrote to Francis on 31 July, asking him to interpose with the justices and secure his respite.[2] Francis paid no heed to Nandkumar's entreaties. Nandkumar sent another petition to the Council.[3] This petition was received by Clavering on 4 August, a day before Nandkumar's execution.[4] In this petition Nandkumar alleged that he had been illegally and maliciously tried by the judges.

Clavering did not present this petition to the Council until 14 August, nine days after Nandkumar's execution. After it was read in the Council, Francis proposed that, as it was of a libelous nature it should be expunged from the proceedings of the consultation. His proposal was carried; the petition was expunged from the consultation and publicly burnt by the common hangman.

These were the measures taken from 16 June to 4 August to save the life of Nandkumar. We find that every petition was grounded on the prisoner's ignorance of law; every time the court was moved (it was moved twice), it referred to the case of Radha Charan Metre as having sufficiently publicised the enforcement of the Act of 1729 in India. None of the petitions was grounded on the prisoner having preferred a charge against the Governor-General. We further find that the majority members of the Council, who had publicly supported Nandkumar before and during his trial and had interfered with the processes of the court on his behalf, abandoned him altogether after he was found guilty. If they believed that the prosecution was malicious or the punishment was severe, they had more than one opportunity to move the court for a suspension of the sentence.

Nandkumar was hanged on Saturday, 5 August, 1775, at 8.00 a.m.[5] His execution took place at Cooly Bazar, "within a few paces

[1] Secret Consults 1775, R.A. Vol. 29, 379-80.

[2] Parkes, *Francis*, Vol. 1. Nandkumar's letter to Francis, 37-38.

[3] V.P. Add. MSS 48370.

[4] Francis; *Answer*, 7-11. In their letter to the Court of Directors, the majority members of the Council wrongly maintained that this petition was received by Clavering after Nandkumar's execution. (Council to Court of Directors, 20 November, 1775; H.P. Add. MSS 29103. 136).

[5] Macrabie's account of the execution of Nandkumar, *Annual Register*, 1788, 177-79; also, Francis; *Answer*, 93-100; Macrabie, the brother-in-law of Francis was then the sheriff and as such an eye-witness to the execution ceremony.

off Fort William, and close to the modern Hastings bridge".[1] In Barwell's words—"He conducted himself with decency and at the place of execution acknowledged the justness of the sentence by which he suffered".[2]

Up to the last minute Indians did not believe that he would be hanged. Though he was guilty, they thought he was too rich a man to be hanged.[3] Two days after his execution, Francis wrote to Sir Edward Hughes at Madras:

"Whether he was guilty or not of the crime laid to his charge, I believe no man here has a doubt that, if he had never stood forth in politics, his other offences would not have hurt him."[4] "The fact is that this poor man", wrote Hickey in his memoirs, "like the unfortunate Admiral Byng, fell a sacrifice to party."

Before closing the story of the trial and execution of Nandkumar, it is necessary to refer to the addresses presented to Impey by the grand jury, free merchants, Armenians, and Indian inhabitants of Calcutta.[5] In these addresses the subscribers had expressed their satisfaction in possessing in Impey a Chief Justice from whose abilities, candour and moderation, they promised themselves all the advantages which could be expected from the institution of the Supreme Court. Impey was requested to sit for a full length portrait, to be exhibited in the Town Hall.

The majority members of the Council entered those addresses in their consultations with their own comments. They recorded that these addresses were organized and led by men like Nubkissen, Kantao Babu, Santiram, Middleton, Playdell, Robinson and Coja Pestrues, who were either banians or dependants of the Governor-General.[6]

Some Observations on Nandkumar's Case

After having critically examined the trial and the circumstances of the execution of Nandkumar, we may now try to answer certain questions which have a direct bearing on the character of Impey.

[1] Cotton, *Calcutta*, 113.

[2] Barwell to Graham, 9 August, 1775, Barwell's Letters, *Bengal Past and Present*, Vol. XIII, 96. [3] Scott, *A Short Review*, 94-95. [4] Parkes, *Francis*, Vol. I, 36.

[5] H.M.S. Vol. 121, 203-20. The address of the grand jury was signed by 23 of the grand-jurors who sat at Nandkumar's trial, that of free merchants signed by 84, of Armenians it was signed by 44 and of native inhabitants signed by 103. The judges forwarded copies of these addresses to the Directors and the Council. [6] H.M.S. 120, 586-87.

Did Impey and Hastings conspire to ruin Nandkumar? Was Nandkumar really guilty of conspiracy and forgery? Did Impey conduct the trial illegally and unfairly? Had Impey any personal motive in rejecting Nandkumar's petitions for appeal and respite?

On the question of a conspiracy between Impey and Hastings, Macaulay wrote in the *Edinburgh Review*: "If we had ever had any doubts on that point, they would have been dispelled by a letter which Mr. Gleig has published. Hastings, three or four years later, described Impey as the man 'to whose support he was at one time indebted for the safety of his fortune, honour, and reputation'. These strong words can refer only to the case of Nuncomar; and they must mean that Impey hanged Nuncomar in order to support Hastings. It is, therefore, our deliberate opinion, that Impey, sitting as a judge, put a man unjustly to death in order to serve a political purpose."[1]

The letter on which Macaulay's deliberate opinion was based was the one which Hastings wrote to Sulivan some time in 1780.[2] In that letter, Hastings complained against Impey in the following words:

> "I feel an injury done me by a man for whom I have borne a sincere and steady friendship during more than thirty years, and to whose support I was at one time indebted for the safety of my fortune, honour, and reputation, with a ten-fold sensibility."[3]

Which year and what event had Hastings in mind when he used the phrase "at one time"? Macaulay's intuition and Beveridge's reasoning led them to one conclusion; that Hastings in his letter referred to the trial and execution of Nandkumar, "and that he accidently and virtually confessed that Impey had hanged Nandkumar in order to support him".[4]

It is hard to believe that Nandkumar's accusations had endangered Hastings' fortune, honour and reputation. Nandkumar was not the only one to have been encouraged by the majority members of the Council to bring accusations against Hastings. For example, Hastings had been accused by another Indian, of having appointed the Faujdar of Hoogli, on the condition that the latter gave him

[1] *Edinburgh Review*, October, 1841-January, 1842, 182.
[2] Gleig, *Hastings*, Vol. II, 255. [3] *Ibid.*
[4] Beveridge, *Nandkumar*, 154.

half of his annual salary.[1] If Hastings' honour and reputation were likely to be damaged by such accusations, they had been damaged more than once. Whether Nandkumar was alive or dead, Hastings knew that many such charges would be brought against him by his opponents. Since the sole purpose of recording such charges in the Consultations was to humiliate and belittle Hastings in the eyes of both the Indians and the Directors, the purpose was achieved as soon as they were recorded. Since both the parties knew that the Directors would hold no further inquiry into those charges the death or survival of Nandkumar was but of little significance to either. Hence Nandkumar's accusations did not expose Hastings to any unforeseen future danger. By destroying Nandkumar he would have aroused suspicions about, rather than saved, his hanour and reputation. Further, had Hastings and Impey conspired in 1775 to ruin Nandkumar, they would not have wrangled as they did in 1780. Their relationship in the years after 1775 was not very intimate nor did it ever smack of secrecy. They remained good friends but their friendship did not grow at the expense of public duty. When differnces arose between them on public matters they preferred to let their friendship suffer a break rather than compromise with their principles.

Hastings, therefore, in his letter to Sulivan, was referring to some other event, which might have put an end to his Indian career, had Impey not helped him out of it. We have reason to believe that it was the crisis of 1777.

On 19 June, 1777, news arrived from England that the proposed resignation of Hastings, which had been tendered through his agent, Maclean, in 1775, had been accepted, and Clavering had been appointed Governor-General.[2] The Council broke up after reading the dispatches. Next day Hastings summoned the usual Revenue Board Meeting. But Clavering called on the same day, an extraordinary meeting of the Council to take charge of the government from Hastings. Hastings protested. He denied having authorised his agent to offer his resignation and he held himself legally entitled to continue in his office.[3] Clavering, with

[1] George Vansittart to Robert Palk, 13 May, 1775, V.P. European Letter Book.

[2] *Bengal Past & Present*, Vol. XVII. Enclosure in the Barwell's letter No. 534. 244-46.

[3] I.P. Vol. 16267, Hastings and Barwell to Court, 20 June, 1777, 12.

the support of Francis, proclaimed himself Governor-General, informed the provincial councils of the change in the government, and asked Hastings to surrender the keys of the fort.[1] As a result, two rival supreme councils started functioning in Calcutta—one headed by Clavering and attended by Francis, the other by Hastings attended by Barwell, and each claimed supreme powers of the government against the other. Hastings appealed to the judges, assuring them: "that if upon inspection of the papers they should judge that any act of mine had passed from whence any actual resignation could be deduced, I would immediately vacate the chair".

On 20 June, both parties referred the issue to the decision of the judges. A civil war was thus averted. Impey, Hyde and Le maistre were "under the influence of strong prepossessions of what may result from the powerful interests of Clavering" and it was in their obvious interest to preserve Hastings and Barwell and to keep from themselves "the instant effects of Claverings' resentments".[2] The judges decided in favour of Hastings; Clavering and Francis acquiesced in their decision.[3]

It seems apparent that Clavering's assumption of the Governor-Generalship was a more critical and consequental event in Hastings' life than Nandkumar's accusations. Had not Impey and his brethren decided the issue in his favour he would have lost his office.

If any doubt remains as to which of the two events Hastings was referring to in his letter to Sulivan, it is removed by two of Impey's letters which were written in the same year that Hastings wrote to Sulivan. Accusing Hastings of ingratitude, Impey wrote to Dunning:

> "The power which is exerted against me would not have existed in the hands in which it is if I had not helped to keep it there."[4]

In the same language and with the same strength of feeling he wrote to Masterman.[5]

Obviously, Hastings and Impey were referring to the same inci-

[1] *Ibid.*, Francis and Clavering to the Supreme Court, 20 June, 1777, 5-6.

[2] Barwell to Mary, 28 June, 1777, No. 533, *Bengal Past & Present*, Vol. XVII, 243.

[3] Judges decision, I.P. Vol. 16267, 13.

[4] *Ibid.*, Impey to Dunning, March, 1780, 321-23.

[5] *Ibid.*, Impey to Masterman, 1 March, 1780, 13-14.

dent. But Impey's letters are more pointed and they refer to the crisis of 1777 and the support he gave to Hastings against Clavering.

Beveridge charged Impey and Hastings with conspiracy on the supposition that no attempt had been made to prosecute Nandkumar for forgery before May 1775.[1] He claimed that Hastings, in order to defeat Nandkumar's charges which were pending in the Council suborned Mohan Prasad to prosecute him in the Supreme Court. In Macaulay's words: "The ostensible prosecutor was a native. But it was then, and still is, the opinion of everybody—idiots and biographers excepted—that Hastings was the real mover in the business."[2]

As to this, it can be said that a civil suit had been instituted against Nandkumar as early as 1772, by Ganga Bissen, the executor of Bulaki Das. It was for the recovery of a certain sum of money which Nandkumar, so it was later alleged in February 1774, had received on a forged Persian bond from the executors of Bulaki Das. As the Persian bond together with other papers relating to the estate of Bulaki Das was in the custody of the Mayor's Court, an application for their return was made on 25 March, 1774, on behalf of Ganga Bissen. It was stated in the application that the papers were required in order to support a civil suit which the applicant had already instituted in the *Diwani Adalat*.[3] The Mayor's Court does not seem to have considered this application for some long time. Another application was made on 25 January, 1775, a third on 30 January, 1775, and the final application on 24 March, 1775. All these applications were made by Farrer, advocate of Ganga Bissen. At last the papers were returned on 27 April, 1775.[4]

Thus, we find that nearly three years before Nandkumar accused Hastings, a civil suit had been instituted against him for the same alleged activities for which he was criminally prosecuted in May, 1775. We may also infer from the repeated applications made by Ganga Bissen to the Mayor's Court, from January to March, 1775, that the applicant had an intention to prosecute Nandkumar for forgery in the Supreme Court. This inference is further strengthened by the fact that the suitor had failed to obtain any redress against Nandkumar in the civil court. Ganga Bissen could get no redress from the Diwani court; firstly because the court had no power to try a forgery case, into which the original suit had virtually converted

[1] Beveridge, *Nandkumar*, 309. [2] *Edinburgh Review*, 1841-42, 189.
[3] *Trial*, 86. [4] *Ibid.*, 86-87.

and secondly, because one of the Indian members of the court was known to have been recommended to his office by Nandkumar, the defendant in the case.[1]

Why did neither the prosecution nor the defence in the forgery case offer in evidence, the civil proceedings? The defences' reasons were as stated by Farrer before the House; first, that in the civil suit, Nandkumar's witnesses had contradicted each other in several material points, second, that the plaintiff had charged him with forgery, and finally, that when Nandkumar was asked by the plaintiff "either to leave the matter to arbitration, or to make oath that his demand was just", Nandkumar declined both.[2]

Why then did the prosecution not use the civil suit in evidence? Here we may refer to Rouse's statement regarding the nature of the civil suit. He said:

"...there was a darkness in the whole conduct of both parties, which after much careful inquiry, prevented me from forming any decision perfectly satistactory to my own mind, and indeed left an impression not very favourable to either one side or the other."[3]

Was it because the executors of Bulaki Das—Ganga Bissen, Padmmohan and Mohan Prasad—had for some reason or other acquiesced in the forgery? Here we may refer to an entry in Vansittart's Indian journal.[4] On 30 April, 1775, Raja Nubkissen called on Vansittart and told him that some day after the death of Bulaki Das, Padmmohan came to him. Padmmohan complained to Nubkissen that Bulaki had left very little for him under his will. He proposed to make out a false bond in Nubkissen's name. The amount of the bond was to be plain and on payment of the bond from Bulaki's estate, they were to share the amount between them. Nubkissen refused to be an accomplice in a forgery. Thereupon, Padmmohan went to Nandkumar and made to him a similar proposal. Hence arose the Persian bond for Rs. 129,000. After the Persian bond was

[1] *Articles of charge*, 30-32, Deposition of Rouse before the Committee of the House in 1788.

C.W.B. Rouse was the President of the *Diwani Adalat* when the civil suit against Nandkumar came for hearing. This suit had been first instituted in the Judicial *kachahri* and then transferred to the *Diwani Adalat* when the latter was established in 1772.

[2] *Ibid.*, Farrer's deposition before the House, 14. [3] *Ibid.*, 31.

[4] Extracts from Vansittart's Indian Journal, quoted in Southerland, 'New Evidence on the Nandkumar Trial' *The English Historical Review*, Vol. LXXII, No. 284, July, 1957. 452.

paid by Ganga Bissen, Padmmohan complained to Nubkissen that Nandkumar would not give him any part of the money.

If the Persian bond was forged by Padmmohan and Nandkumar, it is hard to believe that Mohan Prasad and Ganga Bissen had no knowledge of it. If they did not know of it in the beginning, they must have known about it at a later stage through Padmmohan. Knowing that the bond was a forgery, they did not object to payment being made on it. It is difficult to speculate as to what held them back at the time of the payment and how they came to file a suit against Nandkumar later on. But their initial acquiescence in the forgery must have complicated matters for them in the civil suit and led to the obscurities of which Rouse complained.

On the first question we may, therefore, conclude that there existed no conspiracy between Impey and Hastings to ruin Nandkumar.

As for the second question, whether Nandkumar was really guilty of forgery, we may now reasonably affirm that he did forge the Persian bond.

Apart from Barwell's observation that Nandkumar confessed his guilt on the day of his execution, we have found in our examination of the trial proceedings that the defence story was concocted and Nandkumar's witnesses were perjurers. An inquiry into the civil suit and the entry in Vansittart's journal further strengthens our conviction of his guilt. Here we may refer to the author of *Seir Mutagherin* reporting that among other strange things found in the house of Nandkumar after his execution, "there came out a small casket containing the forged seals of a number of persons of distinction".[1] All the same, we cannot now ascertain after more than two centuries, the motive of his crime. It is probable that he forged the bond and received payment thereon for Padmmohan and the widow of Bulaki Das; both of them, as we have seen earlier, had received little as compared to the large proportion of the estate bequeathed under Bulaki's will to religious institutions.

As regards the third question, whether the trial was illegally and unfairly conducted by Impey, we have found that the judges, including Chambers, believed, in good faith, that forgery could be tried only under the Act of 1729, that Chambers himself appears to have been subsequently convinced that the Act was in force in

[1] *Seir Mutagherin*, Vol. III, 79.

India and that Farrer, the counsel for the defence, believed that the forgery could be tried only under the said Act. We have also found that Nandkumar was legally under the jurisdiction of the Supreme Court; that Impey during the trial acted impartially; that he put the fewest questions to the defence witnesses; that he warned the jury time and again, whenever the occasion demanded, not to be prejudiced against the prisoner, and in his summing up he very prudently and justly reminded the jury that in a criminal case the verdict must not go against the accused until the guilt was proved beyond doubt. We have noticed not a single instance when Impey deliberately misconducted the trial.

The legality of the trial was questioned, in the impeachment proceedings of the House of Commons on the score of the applicability of the Act of 1729 in India. During the debate on the impeachment motion, it was argued at great length by Sir Gilbert Elliot that the law rendering forgery a capital offence did not extend to India.[1] Macaulay, Mill and Beveridge held the same opinion. Even Stephen appears to have doubts on the legality of the case being tried under the Act of 1729.[2]

Whether the Act of 1729 was in force in India in 1775 is now only a matter of juristic consideration. The relevant points for our inquiry are: whether the judges could reasonably be led to believe that it was in force in India and whether they in fact, and in good faith, so believed? As to this we have found that it was Hyde and Le maistre, and not Impey, who committed the accused under the Act of 1729; that the case of Radha Charan Metre served as a strong precedent, and that Impey firmly believed that Nandkumar could be tried only under the said Act. In the absence of a specific direction as to which part of the English criminal law applied to India, the judges were legally entitled to find out by interpretations which law was applicable in the case before them. It may be added here that the Indian traditions held the judges quite blameless in the whole matter.[3]

Turning to the last question: what motive, if any, Impey had in refusing to grant an appeal or suspend the execution of the sentence. At the outset it can be observed that there were ample grounds for reprieve or allowing an appeal from the sentence of the court.

[1] *Parl. Debates*, 1788, Vol. 27, Cols. 416-22.

[2] Stephen, *Story of Nuncomar*, Vol. 2, 48n.

[3] Busteed, *Echoes*, 100n.

The rank and status of Nandkumar, the fact that he had accused Hastings, the doubtful question of the application of the Act of 1729 in India, and several other reasons, would have been sufficient to justify the judges' decision if they had thoughts of saving the life of a seventy year old Brahman. By influencing one of the judges and then exercising his casting vote, Impey might have secured respite for Nandkumar. It is, therefore, quite apparent that the judges did not want to show mercy to Nandkumar.

Did they act in good faith or did they suffer from a malicious motive in refusing to respite the sentence? According to Stephen, Impey and the other judges acted in good faith:

"I think that in omitting to respite Nuncomar the judges exercised their discretion in good faith and on reasonable grounds, which was all that could be required of them."[1]

To Gilbert, Burke, Macaulay, Mill and Beveridge, the failure to respite seemed to be motivated by the vilest design to accomplish the death of Hasting's accuser.

It was not in furtherence of any political conspiracy that the judges refused to respite the convict. The real motive of the judges was to establish the supremacy and the independence of the Supreme Court against a hostile executive government and to let the Indians realise that the court stood for equality before the law and that it would not be dictated to by the executive power. A letter of Impey to George Johnston, M.P., shows the reasons why he did not suspend the execution of the sentence on Nandkumar:

"The fabrication of new forgeries, and the most gross perjuries during the time of his confinement and even during the course of the trial was an atrocious aggravation of the criminal offence. No explanation would have made the natives understand that the escape from justice, if the sentence had not been carried into execution, had not been occasioned by the witnesses of the prisoner, unless indeed it had been attributed to corruption or timidity in the judges, or a controlling power in the Governor-General and Council; I leave it to your consideration the effect any of these opinions must have had, on the institution of a new court of justice, among inhabitants.

"Had the criminal escaped, no force of argument, no future experience would have prevailed on a single native to believe that

[1] Stephen, *Story of Nuncomar*, Vol. 2, 85.

the judges had not weighed gold against justice. In India it was universally believed that large sums were offered to the judges, and perhaps a rumour of the kind may have reached England.

"When charges were first exhibited against the Rajah, those who ought to have used their authority to strengthen, employed it to insult and weaken the administration of justice and to overawe,... to threaten the judges... Compliments, such as were never received by natives of a rank much above his from Europeans were paid to him,...

"the prison was converted into a Durbar...ladies of the first rank condescended to send condolences....The assurances made too great impression on the unhappy man, they gave him and his dependants a security and insolence ill-suited to his circumstances, they gave out the judges dare not execute the sentence....The Governor-General and Council interfered in the process, claimed a power to protect, examined the officers of justice, and attempted to overrate the proceedings of the judges, some of the members of that Board openly threatened to procure the dismission [Sic] of the judges, if they did not relax the sentence. It was afterwards confidently asserted by one member that he had effected the dismission of those judges who were most obnoxious to him, and that it would be brought out by the ships of this session.

"I found myself urged to carry into execution a sentence against a prisoner, whom taking into consideration his original crime only I most ardently desired to have saved, and would have done it even under the aggravated circumstances, had it been reconcilable to the trust committed to my care."[1]

By snubbing the court, censuring the conduct of the judges and publicly sympathising with the prisoner to the extent of making him expect everything from power and nothing from justice, the majority members of the Council in fact compelled the judges to vindicate their powers and independence by rigidly adhering to the strict letter of the law.[2] Nandkumar, till the last moment of his life, expected that the Council would force the judges to deliver him. By fabricating false evidence during the trial and ignoring the judges after the trial, he had made them merciless. Had these special circumstances not attended his case, his original guilt would not have brought about his destruction.

[1] I.P. Vol. 16259, Impey to Johnston, 18 August, 1778, 196-200.

[2] The majority members of the Council had paid a courtesy visit to Nandkumar on 20 April, a day after he had been accused of conspiracy. (Francis, *Answer*, 62).

CHAPTER IV

IMPEY'S PLAN FOR THE BETTER ADMINISTRATION OF JUSTICE, 1776

THE trial and execution of Nandkumar represented the first victory of the Supreme Court over the executive government of Bengal. It also marked the beginning of a new era; an era in which the rich and the poor, the Brahman and the Sudra, the governor and the governed—all were to be equal before the law. The opposition to the new order did not come from caste-ridden Indian society. It was the majority members of the Council who opposed and tried to annihilate the Supreme Court, the mainspring of the new order. The new councillors wanted to oust Hastings from his office, gain full control over the government and exercise the executive powers without checks and balances.[1] Hence they resented the presence of Impey who, sitting in his invulnerable Supreme Court, was watching them closely.

The triumvirate of Clavering, Francis and Monson was determined to wreak vengeance on those who had either supported Hastings or shown their allegiance to the Court during the trial of Nandkumar. The Faujdar of Hoogli, a Hastings man, was dismissed from his office.[2] In his place was appointed a supporter of Nandkumar. Playdell was dismissed from his office of superintendent of the police and Francis' brother-in-law, Mackrabie, was appointed in his place. The real cause of his dismissal was his presentation of the Free Merchants' address to the judges.[3]

But the main targets of their attack were Kamaluddin and Stewart. The former had been a principal witness against Nandkumar and the latter had sat on the Grand Jury. By oppressing these two, the new councillors wanted to warn others against giving any further support to the Court. Fortunately, both Kamal and Stewart sought the protection of the Court. The Court intervened and thus started a new series of quarrels with the Council.

[1] See Monson's letter to Rockingham, 3 August, 1775, Rockingham Papers, Rl. 1583.

[2] *Bengal Past & Present*, Barwell to his sister, 5 August, 1775. No. 448, 83-84.

[3] V.P. European Letter Book, G. Vansittart to Graham, 4 August, 1775, 111-12.

Impey was convinced that the root cause of the growing dissensions between the Court and Council was the absence of a constitution which could define, regulate and limit the powers and functions of the various organs of the government. Thus, in collaboration with Hastings he drew up a comprehensive plan for the better administration of justice in the provinces. This plan was dispatched to England to be enacted by Parliament, but little attention were paid to it by North's government.

In this chapter, it is proposed first to describe in brief several occurrences which widened the gulf between the Council and the Court. Though such occurences grew in number and significance from year to year until a deadlock was reached in 1779, only those which occurred in 1775 and occasioned the drafting of the plan by Impey, will be discussed in this chapter. Lastly, the process will be described, by which, after his plan had failed to receive the attention of the home government, Impey manoeuvred and tried his level best to get for himself a seat in the Supreme Council.

KAMALUDDIN'S CASE,[1] APRIL-OCTOBER, 1775: THE WRIT OF *Habeas Corpus*

In September, 1772, Kamal rented from the Company the farm i.e. the right of collecting the revenue of Hidgelee in the Calcutta division. In the following year he sub-let his farm to Bassant Roy, and accordingly represented to both the presiding member of the Calcutta Committee of Revenue and Ganga Govind Singh, the *Diwan*, that Bassant Roy would from now onwards pay the revenue and be answerable to the government for all demands on the farm.[2] From that time on Bassant Roy had possession of the farm, collected the rents, paid the revenue to the government, and all the demands of the Calcutta Committee were invariably made on him

[1] The facts of the case have been pieced together from the various letters which passed between the Calcutta Committee of Revenue and the Supreme Council, between Hastings, Impey, the majority members of the Council and the Court of Directors.

[2] H. P. Add. Mss, 29112, Hastings to Directors, 22 September, 1775, 203-13. In every transaction, when the Company let out a farm, the farmer had to give a surety. He could then sub-let the farm to anybody who would become the under-farmer. In this case Sukhdeo Mallik was the surety for Kamal and Bassant Roy was his under-farmer.

until the month of May, 1775.[1] In the whole of that time Kamal never "interfered in the collections, never paid a rupee, was never called upon for payment, nor ever appeared before the Committee as the farmer of Hidgely".[2]

Besides being the ostensible farmer of Hidgelee district, Kamal had a separate contract for the salt collieries of that district. These two transactions were separate and could not be joined together for any purpose.

When Kamal preferred charges against Fawke and Nandkumar in April, 1775, the majority members of the Council threatened him with proceedings for the arrears of revenue. They instructed the Calcutta Committee to prepare an account of the Hidgelee farm and to make Kamal liable for payment of the arrears.[3] Accordingly a demand for the payment of the arrears of revenue was made on Kamal on 30 June, 1775. He objected to the demand on the ground that it was Bassant Roy, the under-farmer, who was responsible for the payment of the arrears. His objections were not considered. In July, 1775, when the trial of Fawke and others was in progress, Kamal was summoned to appear before the Calcutta Committee. On 16 July, 1775, one day after the verdict in the conspiracy case was given, Kamal was arrested and ordered to be put into strict confinement.

On 28 July, 1775, the Supreme court was moved on behalf of Kamal; Impey and Hyde issued a writ of *Habeas Corpus*. In his letter to Lord Bathurst, Impey wrote on the authority of the Supreme Court to issue such writs. "The power of granting them has been founded on Mr. J. Blackstone's opinion that the judges of the King's bench have a right by common law to allow them. We found it highly expedient in a country where every man assumed a right to imprison his debtor."[4] The return made to the writ stated the rights of the Company as Diwan of the provinces; but it was defective in form, for, it did not mention a power in the provincial council to commit a revenue debtor without bail or manprize. Impey

[1] Revenue Consults. R. 49, Vol. 54, Examination of Cotterell by the Board, 25 July, 1775, 1293-1313.

[2] H. P., Add. Mss, 29112, Hastings to Directors, 22 September, 1775, 205.

[3] Calcutta Revenue Commttee. Consults, R. 67, Vol. 59, 481-82, 500-503, 729-30, 850-55, 921.

[4] I. P., Letter Book of Impey, Vol. 16265, Impey to Lord Bathurst, 20 September, 1776, 239.

and Hyde ordered Cottrell, the President of the Calcutta Council of Revenue, to accept bail for Kamal's appearance in the Diwani Court and required him not to take Kamal again into custody until his under-renter had been called upon to pay the rents and had proved insolvent.[1] Thereupon Kamal was released on bail on 9 September, 1775.[2]

To this the Supreme Council reacted by directing the Calcutta council to take Kamal into custody and to pay no attention to any order issued either by the Supreme Court or any of the judges in matters which solely concerned the revenue.[3] Hastings and Barwell did not assent to this resolution of the Council.

In pursuance of the above directive and in utter breach of the under-taking given by Cottrell to the judges of the Supreme Court, Kamal was again taken into custody on 23 September, 1775.[4] On 27 September, he again obtained a second writ of *Habeas Corpus* but was not brought up before the Court until 25 October, when he was finally discharged.[5] While the second writ of *Habeas Corpus* was pending the Faujdar of Hoogli seized the house and effects of the prisoner.[6]

On 25 October, while delivering the judgement of the Court on the second *Habeas Corpus* petition of Kamal, Impey remarked that it was not clear to the Court why the two sums separately due from Kamal on account of salt collieries and Hidgelee farm had been blended together by the Committee and why the sum due on the salt contract which Kamal was ready to pay had not been accepted by the Committee.[7] The Court warned the members of the Calcutta Committee against any further attempt on their part to arrest Kamal until all efforts were made to realise the revenue from the under-tenant, lest, the members should be guilty of contempt of Court and be liable to pay fines and suffer imprisonment.[8] Upon the payment of Rs. 9033 and annas 7, on account of salt collieries, the prisoner was discharged by the Court.[9]

[1] Calcutta Revenue Committee. Consults. 9 September. 1775, R. 67, Vol. 60, 1360-61. [2] *Ibid.* [3] Revenue Consults. 13 September, 1775 & 15 September, 1775, R. 49, Vol. 55, 729-30, 776.

[4] Calcutta Revenue Committee Consults. 23 September, 1775, R. 67, Vol. 60, 1466. [5] *Ibid.*, 28 September, 1775, 1496-97. [6] *Ibid.*, 25 October, 1775, 1618.

[7] *Touchet Commtt. Report*, 1781, Gen. App. 3, Ref. No. 29, Judgement of the Supreme Court, 125-26; also Revenue Consults., R. 49, Vol. 56, 27 October, 1775, 304-18. [8] *Ibid.* [9] Calcutta Revenue Commtt. Consults., 27 October, 1775, R. 67, Vol. 60, 1642-43.

The above account brings us to the end of the first phase of the case. The further developments in the case, being largely irrelevant to our present purpose, can be summarised in a few lines.

After his second release Kamal filed a plaint in the Supreme Court on the same cause of action against Charles Goring and other members of the Calcutta Committee for assault and false imprisonment.[1] On 24 January, 1776, the defendants appeared before the Supreme Court and pleaded not guilty. The trial commenced on 3 April, 1776 and the judgement of the Court was given on 21 January, 1777 in favour of the defendants.[2] Kamal petitioned the Supreme Court for an appeal to the Privy Council against the judgement of the Court. On 22 March, 1777, the appeal was allowed on Kamal's furnishing security for costs to the defendants.

Two important questions were involved in this case. First, whether the Supreme Court was empowered to interfere in revenue matters and in the judicial proceedings of the Revenue Council. Second, who, according to the established practices and customs of the country, was first responsible for the payment of the Company's dues—Kamal or Bassant Roy?

Turning to the first question. In their minutes and protestations to the Court of Directors, the majority members of the Council maintained that the ordering and management of the revenues of the country were vested in the Governor-General and Council by the Regulating Act.[3] They alleged that in the case of Kamal, the Supreme Court, by interfering in the judicial proceedings of the Revenue Committee, had acted illegally and unjustly.[4] On the representation made by the majority members of the Council, the Court of Directors accused the Supreme Court for having "taken cognizance of matters both originally and pending the suits, the exclusive cognizance of which we humbly conceive it to have been the intention of the king and Parliament to leave to other courts".[5]

To the above allegation of the Council against the Court, Impey answered as follows:

"This only I must observe, that they industriously confound the 'ordering and management of the revenues' with the conduct of the Company's servants, in the collections of them. The Calcutta

[1] H. M. S., Vol. 135, 7-24. [2] *Ibid.*, Vol. 134, 544-45.

[3] Revenue Consults., R. 49, Vol. 55, 15 September, 1775, 731-78.

[4] *Touchet Commtt. Report*, 1781, Gen. App. 3, No. 14, Council's petition to the Directors, 97-98. [5] *Ibid.*, 82.

Committee, is no more, than a collector."[1] They were substituted in collector's room by the late regulations of the late President and Council, and therefore they had no more authority than the collector had. The court did disavow every interference in the ordering and managing of the revenue, which, they admitted solely and exclusively vested in the Governor-General and Council, but they held they should be guilty of a breach of trust, if they refused to take cognizance of the violence and oppressions made use of, in the collections, the notoriety and enormity of which, they believed, to be a principal course of their mission. If the Supreme Court did not interfere who was to punish them?

Impey's viewpoint can be put in these words: It is not the concern of the Supreme Court to decide on the propriety of the Company's rules and practices. What concerns the Court is whether the servants of the Company act according to those rules and practices. If they are found misbehaving the Court must correct them. In his letter of 19 September, 1775, to the Directors, he elucidated the above points in the following words: "The Gentlemen do not make the distinction, which is most obvious, between claiming a jurisdiction over the original cause, and preventing their ministers, under the colour of legal proceedings, from being guilty of the most aggravated injustice....For the Court allowing the custom and usage of the collections to be the law of the country, have only compelled the officers of the Government to act conformable to those usages, and not make use of the colour and forms of law to the oppression of the people. No cause could be more pregnant with causes of suspicions of that sort, than the present, the prisoner had made himself obnoxious to several members of the Council, by an information which he exhibited before all the judges on the 19th of April, in a matter in which the several members of the Council were either parties, or had much interested themselves."[2]

While concluding we may remark that Impey genuinely and quite reasonably believed that Kamal was being harassed by the majority members of the Council for having given evidences against Nandkumar and Fawke. He, therefore, thought it was his moral and legal duty, to protect him, and in order to protect him he invoked the aid of certain legal principles which had been firmly established in the English legal system, but were quite unknown to Indians.

[1] I. P., Letter Book of Impey, Impey to Directors, 20 January, 1776, 165-67.

[2] *Touchet Committee Report*, 1781, Impey to Directors, Gen. App. 3, Enc. 25, 106-107.

That behind the Board's proceedings against Kamal lay the malicious intent of the councillors to punish him for his having given evidences against Nandkumar, is further clarified by an inquiry into the second question. Who, according to the rules and practices of the Company, was liable for the arrears of the revenue—Kamal or Bassant Roy?

In his letter of 22 September, 1775, to the directors, Hastings stated that it had been the common practice of the Company to realise the revenue from the under-farmers or the sureties and not necessarily from the ostensible farmer.[1] He cited the example of Raja Kishenchand. Although the Raja was in law only the surety, and his son, Seochand, was the farmer; yet the Committee, from the commencement of the lease, made their demands on the former and treated him as the real possessor of the farm.[2] He further cited the case of Kali Prasad and stated that though he was the farmer the Committee had received rents from Rani Janeky who was the under-farmer and on her failure to account for the rent, the surety, Banarssy Ghose had been next made answerable.

From these uncontradicted statements of Hastings, at least this much is apparent, that there was no hard and fast rule that the revenue in all cases must be realised from the farmer and farmer alone. The real test to determine as to who—the surety, the farmer or the under-farmer—was to be held accountable for the arrears of the revenue, was to find out who in fact possessed and managed the farm, for it was he who would suffer any loss in the event of the farm being reclaimed by the Company on account of the arrears of revenue. In this case Bassant Roy, the under-farmer, appears to be the person who in fact possessed and managed the farm, not as agent of Kamal but in his own right, and it was he who would have suffered if the farm was reclaimed by the Company for the balances of the revenue. In his examination before the Council, Cottrell, the president of the Calcutta Committee, said "...Bassant Roy is the only person whose property can in the end be in any way affected by balances due from the district".[3]

From one of the petitions of Bassant Roy to the Calcutta Committee, dated 5 December, 1774, it is evident that since he took over the farm from Kamal he acted as the principal and not as an agent of Kamal.[4]

[1] H. M. S., Vol. 424, Hastings to Directors, 361-75. [2] *Ibid.*
[3] Revenue Consults., 25 July, 1775, R. 49, Vol. 54, 1293-94.
[4] I. P., Letter Book of Impey, Vol. 16265, 106-7.

Though Kamal remained the ostensible farmer, to all intents and purposes it was Bassant Roy who really possessed and managed the farm and paid the revenues to the Calcutta Committee. Therefore, it was Bassant Roy who as before should have been first approached for the arrears of the revenue. Why was he not dealt with first? What was the motive of the Council and the Calcutta Committee in harassing Kamal without having exhausted their remedies against Bassant Roy?

Impey, in his letter dated 19 September, 1775, to the Court of Directors, suggested the real reason as to why Kamal was so harassed.[1] Kamal had made himself anathema to the majority members of the Council by being principal witness against Nandkumar; "Before and during the trial the pretended claims of Government were used for the purpose of intimidation, and after for that of punishment, and the whole influence of Government is now drawn down on this Court for not submitting to so manifest an outrage of justice."[2]

THE DISMISSAL OF JOHN STEWART, AUGUST 1775 – MARCH 1776

John Stewart had held since 1771 the two offices of Judge-Advocate and Secretary to the Supreme Council. His troubles started in June 1775 when the Supreme Court summoned him to sit on the Grand Jury in the Conspiracy trial of Joseph Fawke and others. He knew that by acting as a juror he would incur the resentment of the majority members of the Council; in particular that of Monson who was a close friend of Joseph Fawke. Hence he wanted to be relieved, but the Court, lacking a sufficient number of jurors, could not afford to spare him. Stewart complied with the Court's order. Consequently on 26 June, 1775, Monson charged him in Council with neglect of duty.[3] He was accused of having neglected to see that a certain Persian document was duly translated in the Persian Office and sent to the Company's attorney without any delay. The Councillors did not inquire whether any unnecessary delay had actually been caused. He was censured for suffering a delay in an office over which he had practically no control. But this was a mere prelude to a more serious blow to his fortune and career.

[1] *Touchet Committee. Report*, 1781, Impey to Directors, Gen, App. 3, Enc. 25 106-7. [2] *Ibid.*

[3] Public Consults., 26 June 1775, R. 2. Vol. 10, 370-71.

On 14 August, 1775, Clavering brought a motion challenging the legality of his holding two offices. He argued that the office of the Judge-Advocate should have fallen vacant on Stewart's succeeding to the post of Secretary.[1] The phrase in the Director's letter that Stewart was to remain in the office of Judge-Advocate 'until a vacancy happen in the Secretary's office', was construed by the majority members to be in the nature of a positive order according to which Stewart should have relinquished the post immediately after succeeding to the office of Secretary.[2] Hastings and Barwell opposed the motion. Hastings argued: 'that Mr. Stewart has held this office for almost four years of which ten months have passed, since the assembly of the present Council, in all which time, the same reasons must have been equally in force and ought to have operated equally for the removal of Mr. Stewart from his office, if he held it illegally or improperly'.[3] He pleaded that it was not the mandatory order of the Directors that Stewart must relinquish his office of Judge-Advocate on being appointed the Secretary of the Council. Barwell rightly pointed out that not only the present Council but the Directors themselves had acquiesced in his continuing in both offices.[4] But these arguments could not change the predetermined mind of the majority. Stewart was deprived of the office of Judge-Advocate.

But this was not the end. On 21 August, 1775, Stewart was censured for a second time for inattention in writing an official letter to one Motte. It was alleged that the letter did not convey the exact meaning of the Board's resolution which it was intended to convey.[5]

A comparison between the Board's resolution and Stewart's letter to Motte written in consequence of the former, may establish how far the councillors were justified in censuring Stewart on that score.

On 10 February, 1775, the Board ordered "that the Secretary

[1] Public Consults., 14 August, R. 2. Vol. 11, 64.

[2] See general letter of the Court of Directors to Board, 10 April, 1771. H.P. Add Mss. 29108, 89-90. The Court had appointed him in 1771 to be Judge-Advocate, to hold court-martial for all forces in the British Settlements in India. Since Stewart had filled with reputation a station in the Secretary of State's Office in London, the Directors had been induced to appoint him to succeed to the first vacancy of Secretary in the Bengal Presidency.

[3] Public Consults, 14 August, 1775, R. 2., Vol. 11, 65.

[4] *Ibid.*, 74. [5] *Ibid.*, Proceedings of 21 August, 1775, 115.

give notice to Messrs. Motte, Scott and Fawke that the license granted them to remain at Benaras is continued until receipt of the next advices from the Court of Directors".[1] On 13 February, 1775, Stewart in consequence of the Board's order wrote to Motte: "...I am nevertheless directed to acquaint you that you are permitted to remain there until the pleasure of the Court of Directors shall be known on your former license or till further orders."[2]

Sometime afterwards when Motte was asked by the Council to return to Bengal, he argued that his license had not yet expired. "On referring to your letter of the 13th February, Gentlemen, I find it thus written 'you have our permission to reside at Benaras until the pleasure of the Court of Directors with respect to your former license shall be known', and beg leave with all due submission to presume from hence that the indulgence you were pleased to grant me on the 10 February, last is not expired."[3] It can be observed that Motte carefully omits to quote from Stewart's letter the phrase—'till further orders'.

In spite of the opposition of Hastings and Barwell and the absence of any *prima facie* case against Stewart, the three councillors by their majority votes resolved "that Mr. Stewart be censured for this second instance of inattention to the orders of the Board and informed that a third transgression will not meet wi h the same indulgence from them".

Stewart knew that a third censure was possible in the near future and that this would occasion his dismissal from the only office which he held at that time. His reply to the resolution was caustic and justified: "The unanimous and unprejudiced censure of the Board even where I might think it in some degree unmerited would fill me with the deepest affliction, but under the present circumstances it does not affect me in the same manner. I look upon these repeated attacks upon me as only preparatory to some decisive stroke on the idea that undermining my character first will make my afterfall more easy. I am prepared for the worst."[4]

The worst followed instantly. His remarks were construed as contumacious and he was asked to submit a proper apology. Stewart declined. Thereupon he was dismissed from his employment of Secretary to the Board. Hastings reminded the majority that according to the Company's instructions of 29 March, 1774, a Company's

[1] *Ibid.* [2] *Ibid.*, 116. [3] *Ibid.*, 115. [4] *Ibid.*

servant could not be removed from his office unless acquainted in writing with the accusation preferred against him and summoned to make his defence. But the majority members of the Council did not deem all these formalities necessary in the present case. On 30th August, Auriol was appointed Secretary.

There was nothing left except to seek redress in the Supreme Court. And in the Supreme Court he had a sympathiser, for Impey knew the real cause of his dismissal.

"I have little doubt that the true cause of his dismission was his attachment to Mr. Hastings, with whom he is closely connected." Thus wrote Impey to Thurlow on 28 December, 1775, and requested the latter to reinstate Stewart in both of his last offices.[1]

Stewart first moved the Supreme Court for a writ of *Mandamus*, which being a prerogative writ was denied. The Court held that it had no power to grant it and desired him to find his remedy otherwise. He therefore brought an action in October against his successor, Auriol, for a sum of Rs. 1,800, which the latter had received as his salary for the month of September.[2] This action was based on an equitable principle of English law. According to that principle the person who is in possession of money which in conscience belongs to another must be compelled to refund it. "For that purpose the English law raises an equitable and justifiable fiction that the defendant did what in conscience he ought to have done, contract to refund; and will not allow him to controvert it. The civil law does the same thing without a fiction. It says though you made no contract, yet as natural justice requires you to pay the money you should be as much bound as if you had made a contract for that purpose."[3] According to the principles of natural justice the dismissal of Stewart from his post being illegal, the succession of Auriol to that post was likewise illegal. Hence any amount which Auriol received while occupying that post he ought to refund to Stewart.

On 23 November, 1775, Stewart's attorney addressed a letter to the assistant Secretary to the Council, requiring him to produce in

[1] I. P., Vol. 16259, 13-15.

[2] H. M. S. Vol. 122, 815-65. Stewart to Directors, 21 November. 1775; he did not bring the same action against Johnson who had succeeded him in the office of Judge-Advocate, because Johnson was not drawing any salary or allowances for his new office.

[3] *Ibid.*, 549. Extract from the judgement given by Impey in Stewart Vs. Auriol.

the Supreme Court on the 28th following, sundry papers belonging to the records of the office and said to be necessary for the information of the Court in the case between Stewart and Auriol.[1] The Council refused to supply the required documents. Thereupon the prothonotary of the Supreme Court appeared before the Council on 28 November and placed a formal demand on behalf of the Court. Then the Council agreed to send only such papers which had direct bearing on the case. And on the following day, the 29 November, the majority members of the Council complained to the Court of Directors about the proceedings of the Supreme Court and the conduct of Impey in the following words:

"It seems to us, Gentlemen, that the proceedings of the Supreme Court in this case, and the declaration made by the Chief Justice from the Bench, constitute a Precedent of the greatest consequence to the conduct of your affairs here,...This doctrine is general and indefinite. It makes no distinction in the nature of the papers to be produced and leaves no discretion to us to judge of the consequences, which may attend their being divulged."[2]

The case was tried in December but the judgement was given on 13 March, 1776. Chambers and Hyde were of the opinion that judgement ought not to be for Stewart and Impey and Le maistre of a contrary opinion, therefore Impey's casting vote carried the judgement in favour of Stewart.[3] Since the judges were divided in their opinion and the defendant wished to appeal to the Privy Council, the petition of appeal was received and appeal allowed on 19 August, 1776.

Impey based his judgement solely on the 20th paragraph of the Company's instructions of 29 March, 1774.[4] In his letter of 20 Janu-

[1] Public Consults. 28 November, 1775, R. 2. Vol. 12, 42-48.

[2] I. P. Letter Book of Impey, Vol. 16265, Council to Directors, 29 November, 1775, 127.

[3] Public Consults. 1 April, 1776; The letter of Robert Jarret (Company's attorney) to the Council.

[4] Bengal Despatches, 1774 Vol. 7, 58-59. It runs as follows: "we also further direct that before the removal of any Company's servant from any office, the party be made acquainted in writing with the accusation preferred against him, that he be summoned to make his Defence, having a rasonable time allowed him for that purpose, and that you proceed on all such occasions, with the greatest tenderness and circumspection, and we further direct, that all such charges made before you against any of our servants in your department with all proceedings thereas, be regularly entered upon your consultations, and with them transmitted to us."

ary, 1776, to the Court of Directors, while justifying his stand in the conflict between him and the Council, he referred to Council's minutes of 20 November, on Stewart's case and refuted the allegation made therein against him. The Councillors had complained:

"If we dismiss the Judge-Advocate, he applies to the Supreme Court for a Mandamus to reinstate him in his office. If we dismiss the Secretary of our Board we see him encouraged to bring an action for the salary against his successor."[1]

Impey answered these charges in the following words:

'It can hardly be imputed as a crime on the judges, that an application is made to the Court. Had they been candid, they would have stated, that the Mandamus was refused, and on grounds which would ever after prevent application on that nature.

'They should have stated that the sole question in that cause is, whether the 20th Paragraph in the Company's Instructions, doth not inhibit the Governor General and Council, from suspending or dismissing the Company's servants, without giving them a copy of a charge in writing, and calling upon them, to make their defence, which the instruction requires, shall be transmitted to the Court of Directors. The Court have already declared, that they will not try whether the cause of the dismission is proper or not.'[2]

Impey wanted to protect a victim of the party-politics, for had there been no division in the Council, Stewart would not have been dismissed. 'In this situation had no division arisen in the Council, I should certainly have remained in the station in which by your favour I was placed, unmolested and contented with my not,... but unhappily for me, unhappily for your service and for the country in general, a decided division soon took place, and a spirit of faction and violence to which I am at last made a sacrifice,'—thus wrote Stewart on 21 November to the Court of Directors.[3]

THE PLAN: INDIA TO BE GOVERNED IN INDIA

Having so far failed in their attempt to dominate the Court, and realising that a violent attack would be premature, the new Councillors started blaming the Court for the disorders which they were deliberately creating in the governance of the Provinces. For example, they had abolished on 1 November, 1775, the *Sadar Diwani*

[1] H. M. S. Vol. 424, 313. [2] *Ibid.*, Impey to Directors, 20 January, 1776, 67-68.
[3] *Ibid.*, Vol., 122, 822.

Adalat and *Diwani Adalat* of Calcutta and had transferred the direction and control of the *Sadar Faujdari Adalat* to Naib-Nazim at Murshidabad.[1] Prior to this they had asked for and received a written assurance from the Supreme Court judges on the legality of holding the *Sadar Diwani Adalat* at Calcutta. The judges had assured them that the Supreme Court would not interfere with the proceedings of the *Sadar Diwani Adalat* and no appeal from its decrees would lie in the Supreme Court.[2] Hence the abolition of the Company's chief civil court and the transfer of the chief Criminal Court to Murshidabad were done without apparent reason.

At the close of 1775, therefore, a harmonious functioning of the King's Court and the Company's Council seemed impossible. There were only two possibilities for preventing a violent quarrel between them. The first was to curtail the powers and jurisdiction of the Court and to let it function under the control and direction of the Council. That would in effect defeat the very purpose of the establishment of a court in India. The second solution lay in precisely defining and delimiting the powers and functions of the Court and the Council, of extending the jurisdiction of the Supreme Court over the entire provinces and placing the Company's Courts under its direct supervision and control. The new Councillors upheld the first alternative and Hastings, Barwell and the judges believed in the efficacy of the second.

This involved the drafting of a plan and its enactment by Parliament. The plan was drafted by Impey and it was sent home in the style of a bill by Hastings and Barwell.[3]

The plan had three main features; it vested the sovereignty of the provinces in His Majesty; it established a legislative body in India; and finally, it gave the Supreme Court a controlling and supervisory authority over all the courts in the provinces.

The Sovereignty of the Provinces:

Impey had frequently attacked the delusion of treating Mubarak-ud-daulah as the sovereign of the Bengal provinces. This piece of mockery, he thought, could no longer deceive any foreign state because they all knew from the printed reports of the House of Commons that the Nawab was no more than a prisoner of the Com-

[1] *Touchet Committee. Report*, Gen. App. 3, Ref. No. 17, 100.

[2] I. P., Letter Book of Impey, Vol. 16265, 32.

[3] H. P., Add. Mss. 29207, the bill of 1776, 72-117. Also H. M. S. 124, 97-410.

pany. Inside Bengal this fictitious authority of the Nawab was sometimes used as a shelter from the jurisdiction of the Supreme Court. "The whole purpose of erecting the Supreme Court of Judicature at Fort William in Bengal is defeated", Impey argued, "the instant it is admitted that it is sufficient answer to that Court to any charge of oppression or other enormity done by persons described in the Act to be under the jurisdiction of the Court that it was done under the authority of the Nazim, or to a civil suit against the persons described in His Majesty's Charter as objects of its civil jurisdiction that the defendants are servants of the Nazim; at present both these claims are set up and insisted on".[1]

Therefore, the sovereignty of the provinces which was so far exercised by the Company in the name of the Great Mughal or the Nawab, was under the plan vested in His Majesty.

Sadar Diwani Adalat

This was to be a judicial and semi-legislative body. It was to consist of the Governor-General, four Councillors, the Chief Justice and the three puisne judges of the Supreme Court. This Court was to "make, form and enact, and issue such Laws, Statutes, Acts and ordinances" for the civil Government of the British possessions as they deem just and necessary. It was also impowered to impose and levy taxes and assessments on houses and lands within the town of Calcutta. The Acts and rules passed by this Court were not to be valid until registered in the Supreme Court and they could be annulled or confirmed by His Majesty in Privy Council.

This Court was to sit as a High Court over all the Courts in the provinces. Each district town was to have a districts civil court (Adalat Diwani Mufassal) and each divisional town a superior civil court (Adalat Diwani Jillaeaut).[2] These districts and divisional courts were to try civil suits only. The revenue cases were to be tried by the courts of the provincial Council. These Councils were

[1] H. M. S. Vol. 123, Impey to Lord Rochford, 13 March, 1776, pp. 482-83.

[2] There were seven divisions: Burdwan, Calcutta, Chittagong, Dacca, Dinajpur, Murshidabad and Patna; and twenty nine districts: Allassing, Beerbhoom, Bellsa, Belorea, Betia, Bhagalpur, Bishenpoor, Bossna, Buzzojomedhoor, Cooch-Bihar, Hidgelle, Hoogli, Jellasore, Jessore, Jungtetessry, Memensingh, Midnapur, Nuddea, Pacheet, Purnia, Rajmahl, Ramgarh, Rohtas, Runypoor, Shahabad, Silhat, Sircar-Saran, Tirhoot, and Tripura. (H. P. Add. Mss. 29207, 87).

to be seven for seven divisional towns, each consisting of a President and three Councillors. Appeals were to lie in the divisional courts from the judgements of the district courts and in the *Sadar Diwani Adalat* from the judgements of the divisional civil courts and the courts of the Provincial Council. The decisions of the *Sadar Diwani Adalat* were to be final.

Thus, the administration of civil justice and the settlement of revenue cases in the provinces were brought under the supervision of the *Sadar Diwani Adalat*. Criminal justice was to be administered as before, by a separate superior court, styled the *Sadar Nizamat Adalat*. This court was to sit at Calcutta and was to consist of a principal judge (Daroga), a chief Qazi, a chief Mufti and Maulavies; only in this branch were Indians to be appointed to certain offices. Impey had no faith in 'black judges'. His small experience had shown him that 'the natives should not much be confided in'.[1] This court was to revise and review all and every charge, information or complaint preferred in subordinate criminal courts established in each of the district towns. But the Supreme Court was empowered to mitigate or aggravate the punishment for certain crimes.

The Supreme Court

The Supreme Court was not only to retain its powers and jurisdiction as granted by the Charter of 1774, it was further empowered to transfer to itself any suit pending in any of the Company's courts except the *Sadar Diwani Adalat*. Moreover, it was given executive powers to remove for corruption and inefficiency the judges, not only of the district and divisional civil courts, but also of the provincial Councils.

These were, in brief, the main features of the plan. It mirrors the ideas, experiences and ambitions of Impey. The idea of vesting the sovereignty of the provinces in His Majesty was not a new one. Robert Clive and James Fox for example had, raised this question. It was only in his reasoning that Impey differed from the rest. The King's justice could not be properly administered in a territory which was owned by a Nawab and governed by a trading company. Impey had realized that for the establishment of the rule of law in India, it was not enough to have the laws and the

[1] H. M. S. Vol. 124, 416. Impey to Hastings, 28 March, 1776.

law courts. The government and the people must also respect them.

This condition would be fulfilled if sovereignty was transferred to the Crown and in consequence the Indian government and the Indian people became respectively His Majesty's government and His Indian subjects.

Impey's experiences had shown him that the Company's revenue collectors in the districts wielded enormous powers and most of them were corrupt and oppressive. There must be, therefore, a separation of powers. Accordingly three separate sets of courts—revenue, civil and criminal—with three separate panels of judges were planned for the provinces. The judges were to be given a sense of independence and security by the fact that though they were to be appointed by the Council they could be dismissed only by a decree of the Supreme Court.

The idea of vesting the *Sadar Diwani Adalat* with legislative powers was borne out of necessity. At that time the authorities in India had to apply for the permission of those in England to initiate even minor reforms in the administration of the country. Points of conflict between different organs of the government and sometimes differences of opinion between the members of the same organ, had to be referred to England for final decision. At that time it took about seven months by sea from Calcutta to London. The Indian authorities had to wait for at least fourteen months for the decision or directive of the home authorities on a certain point. In that long time a situation might change, a deadlock might develop into a major crisis. It was, therefore, necessary to have more powers transferred from London to India. If the Indian possessions were to be governed efficiently they must be governed in India.

But it was in the composition of the *Sadar Diwani Adalat* that Impey's plan seems ambitious and contrary to the principles of the English legal system, of which he was an ardent advocate. The judges of the Supreme Court were to sit with the Councillors in the *Sadar Diwani Adalat* for the purpose of enacting laws and hearing appeals from the subordinate courts. Virtually the judges were to enact, execute and administer laws, a proposition of which English traditions would not approve. Commenting on this on 21 March 1776, Clavering, Monson and Francis minuted: "The Governor General and Council and the judges are to frame laws for the Government of the Country, that is, the legislative power is to be lodged

in the same hands with the judicial, in order that the judges may execute their own laws."[1]

The plan vested enormous powers in the Supreme Court, possibly more than would be deemed necessary for the due administration of justice. It made the Court an all-pervading body, every branch of the Government coming directly or indirectly under its supervision. "It is proposed to give the Supreme Court a complete control over every part of the country, and this measure is supposed to be the more necessary from the alarming contests which have already arisen between this Government and the Supreme Court concerning the extension of its authority. The complaint is, that they have assumed more than they have a right to, the redress proposed is, to set no limits to their power." Thus commented Clavering, Francis and Monson on 21 March, 1776.[2] Their idea of a harmonious government was the complete subordination of the Court to the Council. Under the plan the Court was to act as a check on the executive government of the provinces. The majority members of the Council therefore questioned it:

"How are millions to be governed by hundreds, if the same principles, on which the Superior state acts to its subjects at home, are applied to its foreign acquisitions?"[3]

Though Impey's plan was not considered by North's government in England and it was soon forgotten, its importance lies in the fact that its main principles were recognized and applied in the administration of India many years later between 1853 to 1861. The Act of 1853 established for the first time a legislative council in India, the Act of 1858 vested Her Majesty with the sovereignty of the Indian possessions, and the Indian High Courts Act of 1861 effected the amalgamation of the two sets of courts—the Company's courts and the Supreme courts. Impey's plan reveals his foresight. Hastings wrote to Vansittart:

"I never before had so high an opinion as this [the plan] has given me of Sir Elijah's abilities, which are indeed great, and his knowledge of his profession equal to them. He is a pleasant man to contest an opinion with, and the other judges pay great deference to his judgement."[4]

[1] I. P., Letter Book of Impey, Vol. 16265, 192.
[2] *Ibid.*, 190.
[3] *Original Letter*, Tract, No. 795, 34.
[4] V. P., Hastings to Vansittart, Add. Mss. 28370, 30 March, 1776.

IMPEY'S ATTEMPTS TO SECURE A SEAT IN COUNCIL

From 1776 to 1781, Impey seized every opportunity to obtain a seat in the Council. Immediately after the death of Monson in 1776, he wrote to Thurlow about the necessity of appointing a judge, preferably himself, as a member of the Council. "Sometime or other the inconveniences of not having a member of the Court a member of the Council will be felt. Misapprehensions, misrepresentations and jealousies which could be easily cleared up as they arise with immediate explanation do, will and must ferment into animosity and enemities.... I still hope you will endeavour to promote me...I really think that it is necessary for the tranquility of the settlement and the uniting the powers of Government in this country that one judge of the Court should be admitted into the council."[1]

When Clavering died of dysentery on 29 August, 1777 and for the second time a vacancy fell in the Council, Impey did not miss even a single day to put forward his claim to Thurlow, Weymouth, Dunning and Bathurst.[2] In his letter to Dunning, 30 August, 1777, he wrote: "I most sincerely think that the chief judge having a place in Council will contribute much to the strength, care, and harmony of the Council and Court. If there is any way in which you can assist me I am sure I need not direct you."[3] On the same date he wrote to his brother Michael Impey, asking him to meet Dunning and others and canvass his case.

Again in 1778, when it was secretly conveyed to him that Barwell would resign his post and sail for England, Impey solicitated Thurlow to secure his appointment to the vacancy that might occur. He told Thurlow that he preferred to return home and practise law, that his present financial condition was very poor, hence by getting promoted to the Council he might be able to make some savings,

[1] I. P., Vol. 16259, Impey to Thurlow, 20 October, 1776, 52-54.

[2] *Ibid.*, *Thurlow, Edward*, 1st Baron (1731-1806) Attorney General in Lord North's government and Lord Chancellor 1778-83.

Weymouth, 3rd Viscount and 1st Marquis (1734-96) Secretary of State for Southern Department 1775-79.

Dunning, John, (1731-83) was Solicitor General (1768-70) and later created Lord Ashburton and appointed Chancellor of the Duchy of Lancaster in 1782.

Bathurst, Henry, created Baron Apsley 1771, and succeeded as Second Earl Bathurst 1775; Lord Chancellor 1771-78; Lord President of the Council 1779-82.

[3] *Ibid.*, Impey to Dunning, 30 August, 1777, 82-83.

which would eventually enable him to quit India before long and start a career in England. In the same letter Impey wrote: "... but I do not pretend such patriotic a thrust as not to confess that my private interest operates more with me in this address than public good."[1]

Asking his friend Sutton to canvass his case, Impey wrote: "you may promise anything in my name that is consistent with honour and I believe I need not say that you may depend on my performing your promise."[2]

To Dunning and Sulivan he wrote that his having a seat in the Council would not only forward his return, but would be of public utility, for, notwithstanding his past differences with Hastings he would support him in the Council.[3]

All his prayers fell on deaf ears. Yet he did not give up renewing his claims from time to time. He wrote to Thurlow twice in 1780 on this matter. In his letter of 2 March he appraised him of the hostility which the Governor General and Council had given the Court without any provocation and requested him to secure for himself a seat in the Council in order to protect the interests of the Court and His Majesty.[4] In September of the same year he was writing to Thurlow again about the rumour that Chambers would be given a seat in the Council. "...Something had been said in England that made him [Chambers] think he had Lord North's promise to be put in Council on the first vacancy, which was kept no secret here; this instance of His Majesty's notice of him, was pointed out as a pledge of his future success in both, a mark of my having incurred displeasure. Every token of Royal favour has more weight given to it here than in England; the English are less accustomed to see them, the natives do not understand the nature or degree of them. A Red Ribbon distinguishes more here than a blue one at home, and the natives do not know the different dignity which is attached to the different colours. They being used to power exercised by a single person look up to a president of a board or Court and to him only, and are easily taught that when an inferior member receives an honour, the superior who does not receive one at the same time is disgraced."[5]

[1] *Ibid.*, Impey to Thurlow, 12 August, 1778, 194-206.

[2] *Ibid.*, Impey to Sutton, 22 November, 1778, 214-15.

[3] *Ibid.*, Impey to Dunning, March, 1780, 240; Impey to Sulivan, 6 August, 1780, 249-50. [4] *Ibid.*, Impey to Barwell, 27 January, 1781, 384. [5] *Ibid.*, 147-49.

After Francis resigned his post in the Council in 1780, Impey promptly wrote to Barwell, who had by then returned to England, asking him to meet Sulivan and Thurlow and secure for him a seat in the Council, next to Hastings, and assuring him that he would fulfil most punctually any engagement he might make for him.[1]

Neither Impey nor Chambers was given a seat in Council.

The proposition of giving the Chief Justice a seat in the Council was inconsistent with the principles of English jurisprudence; also, it was most unlikely to create harmony between the Court and the Council. A real harmony between the judicial and executive organs of the Government could be achieved rather by clearly defining their powers and jurisdictions than by uniting them into one single whole, which would have defeated the very purpose of an independent judiciary. Impey's plan, in spite of certain objectionable provisions, if enacted, would have solved the problem more amicably than his appointment to the Council.

[1] *Ibid.*, Impey to Barwell, 27 January, 1781, 384.

CHAPTER V

THE CONFLICT BETWEEN THE COURT AND THE COUNCIL: THE PATNA CASE, 1777-79

Impey's plan was sent home at a time when the British Government was preoccupied by the American War of Independence (1775-83). The Government's attitude towards Indian affairs was marked by indecision and even indifference. Consequently the judges and the councillors were left to interpret and define for themselves their respective powers and functions. But there were basic differences in their standpoint. The judges conceived it to be the main purpose of the Court to protect Indians throughout the provinces from the oppressions of the Company's servants. The councillors on the other hand, wanted to confine British justice to the town of Calcutta. Its extension into the provinces, they feared, would be dangerous to a government whose main function as they saw it was to collect revenue, not to administer justice. Thus, a series of quarrels occurred between the Court and the Council, which came to a head in the Patna case.

Important issues were involved in the trial of this case. Were the Company's revenue collectors (the farmers and the sureties), residing in the remoter parts of the provinces, amenable to the jurisdiction of the Supreme Court? Were the provincial *Diwani Adalats*, which had been established in 1773 and consisted of the members of the provincial council, legally constituted courts of justice? If so, could their judges and officers be sued in the Supreme Court for irregular and corrupt discharge of their duty? Apart from the legal issues involved, the Patna case shows how civil justice was administered by the Company's servants in the provinces outside Calcutta. Its further significance lies in the fact that it became the subject of the second article of impeachment against Impey.

Background

This action was brought in the Supreme Court in the latter half of 1777 by Naderah Begum, a widow, against her husband's nephew, Behdar Beg, and against the Qazi of Patna, and two Muftis of the

provincial court of justice there, for injuries alleged to have been done to her, in consequence of the orders, and of a decree of the Chief and Council at Patna, acting as a court of justice.[1]

We need first a short account of the circumstances which led to the proceedings in the Patna Council.

One Sahbaz Beg Khan who came from Kabul to Bengal and served the Company for some time, retired at a fairly advanced age, settled at Patna,[2] and married Naderah Begum by whom he had no children. After some time his nephew Behdar Beg, (son of his brother, Allum Beg), came from Kabul to live with him.[3] Behdar Beg remained with Sahbaz Beg Khan until the latter's death which occurred in November or December, 1776. Sahbaz Beg Khan having died without issue, his widow, Naderah, and his nephew, Behdar, disputed his inheritance, each claiming the whole; the widow under a *Hibbanama*, alleged to have been executed by the deceased in his lifetime, and the nephew as an adopted son, a sharer or a residuary.

Behdar Beg petitioned the Patna Council on 2 January, 1777.[4] He claimed to be the adopted son of the deceased. He alleged that Naderah Begum was removing the effects of the deceased, therefore, orders should be given to prevent the removal of the goods, and to recover such as had already been carried away. Further, the Qazi should be directed to ascertain his rights.

On the same day the Patna Council, then composed of Simeon Droz, Ewan Law, Edward Golding, William Young and Bird, ordered Qazi Sadee and Muftis, Gulam Makhdoom and Baracktoolah, to take an inventory of the property of the deceased, and to allot the shares of each claimant according to the Muhammadan Law of inheritance.[5] Accordingly, the law officers went to the spot and started their investigation.

[1] *Touchet Committee Report*, 1781, 5.

[2] *Ibid.* He was for sometime in the service of Watts, a member of the Council at Calcutta, then joined the English army and rose to the command of a body of horses about the time of Mir Jafar's succession; in the course of his service he obtained from the Mugal Emperor the grant of an *ultumghaw* (revenue free land) in the province of Bihar; when the war with Kasim Ali ended he left the army and took up a residence at Patna; about this time he married Naderah Begum by whom he had no issue (Bogle's Report—Law Consults. R. 166, Vol. 82, 1-190). After his retirement he continued to receive some allowance (about Rs. 200 per month) paid to him as half-pay from Calcutta. (Law's deposition before Committee of the House: *Touchet Committee Report*, 13.)

[3] H. M. S., Vol. 422, 720-30.

[4] Law Consults., R. 166, Vol. 82, 679-80. [5] *Ibid.*

Under Muslim law the childless widow of an intestate was entitled only to a fourth share of the property. But Naderah Begum based her claim to the entire inheritance of her husband's property on *Hibbanama* and *Ekrarauma*, both of which, she alleged, were executed by her husband in his lifetime. *Hibbanama* was a deed of gift by which her husband had bestowed on her his entire property. But in Muslim law a gift was not valid unless the donor immediately transferred the possession of the object of the gift to the donee. By *Ekrarauma*, therefore, the deceased had transferred the property to Naderah Begum. The gift was thus made complete and valid.

Behdar Beg, on the other hand, disputed the genuineness of the deeds. He alleged that the deeds were forged by one Cojah Zekeria, a cousin of the widow, after the death of Sahbaz Beg Khan.

Thereupon the law officers made a brief investigation into the facts. Doubtful evidences based on hearsay were admitted. On 20 January, 1777, they reported their decision to the Patna Council. Behdar Beg's story had seemed to them clear and explicit. Hence they considered that the deeds were forged. They, therefore, submitted that the property of the deceased 'be divided into four shares, whereof three should be given to Behdar Khan, his father being the legal heir of the deceased, and himself the adopted son, and the remaining share to Naderah, the deceased's widow'.[1]

The same day, without further investigating the matter, the Patna Council ordered that the decision of the law officers should be executed and Cojah Zekeria and others involved in the alleged forgery should be put in confinement to be tried for forgery in the *Faujdari Adalat*.

The Qazi and the Muftis started to enforce their own recommendation. They appointed Zekeria as the attorney of the widow, took the inventory of the effects of the deceased, employed appraisers to value the effects and finally divided them into four shares. From the beginning the widow resisted the proceedings of the law officers and in protest or under humiliation sought refuge in the Durgah of Shah Arzaum, a habitation of Faqirs, with the title-deeds of the property and her female servants.[2] As she had refused to take her

[1] *Touchet Committee Report*, 1781, Report of the Qazi, Pat. App. 2, 230.

[2] In his report to the Supreme Council, N. Naylor, Company's attorney, gives a short description of this Durgah—'The Durgaw of Shaw Azim which in several parts of the proceedings is improperly translated as a monument, and conveys an unpleasant idea to the reader as a place of confinement, is a public seminary

share it was locked up by the law officers; Behdar took possession of his shares.

Behdar Beg presented his second petition to the Patna Council on 30 January, 1777, stating, that the widow had refused compliance with the decree of the Council and had disgraced the family by absconding into a Durgah; and praying that she might be delivered up to his care.[1] Thereupon the Council ordered that Behdar's request be complied with, and that 'she be constrained to return to the House under his protection, and deliver up the Sunnuds and other papers of the estate.'[2] This order of the Supreme Council not having been carried into effect by the Qazi, the Council for the third time was petitioned by Behdar on 20 March, 1777, whereupon the Council reprimanding the Qazi for the delay, asked him to carry out their orders immediately. The Qazi reported that the widow paid no attention to his requisitions and suggested that under the existing circumstances it would not be contrary to custom to use force for compliance. On receiving this report the Patna Council resolved to station a guard of sepoys by the widow and to prohibit people having any contact with her, so that she would be forced to surrender. The guard was maintained until 5 May following, when the widow, still refusing compliance, it was withdrawn[3]

These transactions at Patna gave occasion to the following proceedings in the Supreme Court.

Naderah Begum came down to Calcutta and brought an action in the Supreme Court against Behdar Beg, Qazi Sadee, Mufti Baracktoolah, and Mufti Gulam Makhdoom (the Qazi and Muftis to whom the provincial council had referred the cause at Patna).[4]

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or college founded by Shaw Azim—The walls enclose a space of more than a mile English, in which are spacious buildings, large pieces of water, and public walks, to which the people of Patna resort for pleasure.' The above facts were verified by the deposition of Naderah Begum's witness, Gulaum Husain Shaw, in her second suit against the members of the Patna Council. (See: Law Consults., R. 166, Vol. 83, Naylor's Report.)

[1] *Touchet Committee Report*, 1781, 16.

[2] Law Consults., R. 166, Vol. 82, 701.

[3] *Ibid.*, R. 166, Vol. 79, Pat. Council to G. G. & C., 15 December, 1777, 71.

[4] 'The action was for assault and battery, false imprisonment, breaking and entering her house, seizing her effects, and other personal injuries, as expressed in the declaration; for which she laid her damages at 600,000 sicca Rupees, or about £66,000.' (*Touchet Committee Report*, 6.)

The first process of the Supreme Court was a Capias (a warrant) with a bailable clause, against all the defendants. A bailiff from Calcutta arrested Behdar Beg and Qazi Sadee on 13 December, 1777. On 29 December bail was offered for all the defendants by the Patna Council and the two already confined were set free on that date. The Governor-General and the Council resolved on 13 January, 1778 to defend the suit. The reason assigned for this resolution was that the defendants were prosecuted for acts done in the regular and legal exercise of the judicial powers of Government.[1]

The Trial

The case was tried in November, 1778, and the judgement was delivered on 3 February, 1779.[2]

The most important point the judges had to determine first related to the competency of the Supreme Court to try the defendants who were neither inhabitants of Calcutta nor British subjects. Outside Calcutta the court had jurisdiction only over that class of Indians who were employed by the Company or their servants. Since Qazi and the Muftis were the employees of the Patna Council, they were under the jurisdiction of the Supreme Court. But it was contended on behalf of Behdar that he being a mere surety, at the most a farmer of revenue, was not under the jurisdiction of the Court.

Were the farmers of revenue servants of the Company? Defence witness William Young, a member of the Patna Council, differentiated a farmer from a collector of revenue.[3] A farmer was a person who entered into a specific engagement to pay a certain sum for the revenue of the country. Besides that stipulated sum the government had no other claim on him. A collector, on the other hand, was a person who for a fixed salary was employed in collecting the revenue of the government which was fixed at a certain sum. If he collected more he was liable to be called to account for it. In the case of a farmer it was not so.

The judges unanimously overruled the objection. A farmer like a collector was vitally concerned in the collection of the revenue for the Company. A farmer as such was, Impey held, 'within the Act of

[1] Law Consults., 13 January, 1778, R. 166, Vol. 80, 36-38.

[2] The trial lasted for ten to eleven days. Forty witnesses appeared during the trial and forty six depositions were made by them. In all there were twenty four exhibits. (Law Consults., R. 166, Vol. 82, 319-30.)

[3] *Touchet Committee Report*, 1781, Pat. App. 11, 237.

Parliament and the Charter, a subject of the jurisdiction of this Court, as being a person employed by, or directly or indirectly in the service of the East India Company; and if this be not the case, by simply changing the name of the officer, and paying for his trouble in a different mode, every salutary provision of the Act of Parliament, intended to remedy oppression and extortions in the collections of the revenue, would be evaded'.[1] Justice Chambers was inclined to maintain a difference between a farmer and an ancient Zamindar in possession of hereditary lands, but not between a farmer and a collector.

Behdar, having failed in his 'plea to jurisdiction', joined the other defendants, the law officers, in a 'notice of justification'. It was argued that the acts of which they had been accused were done by them in the execution of the orders of the Patna Council, which had been acting as a lawfully constituted court of justice.

This contention involved two points. Were the provincial councils lawfully constituted courts of justice, empowered to try civil suits between Indians? If so, had they exercised their powers legally in authorising their law officers to inquire into and decide upon the matters of both facts and law, involved in the particular case?

On the first question, Impey's answer was in the affirmative. The provincial councils were authorised to administer civil justice. But their authority to sit and act as a court of justice was a delegated authority from the Governor-General in Council. Since a delegated authority, according to English law, cannot be redelegated—*Delegatus non potest Delegare*—the Council had acted illegally in passing on to their law officers the inquiry and decision in suits, which in law must have been determined by them. This practice, Impey commented, involved too much trust being put in 'Black judges'; they were not only to interpret and expound the law but also to inquire into the facts of the case, a power which in law should never have been delegated to them. 'I shall always believe' affirmed Impey 'until I am convinced to the contrary, that principles of justice are more deeply rooted in the minds of my own countrymen than in the corrupt natives of this country'.[2] His decision, he hoped, would restore to the provincial council their legal authority, give vigour to the administration of justice, add to the security and stability of property in India, and create 'what is highly wanted

[1] *Ibid.*, 238-39. [2] *Ibid.*, 247.

in the natives of this country, a confidence in the provincial administration of justice'.

The defendants having thus failed in justifying their actions, were obliged to plead 'not guilty' and to try for the mitigation of damages. Evidences were given by both parties on the question of the appointment of Zekeria as the vakil of the Begum, on the taking of the inventory and the division of the effects, on the eviction of the widow from her house and on the oppressions inflicted upon her in the Durgah and on the genuineness or otherwise of the deeds. The last question was now not important for the determination of the case. The court was not inquiring into the ownership and inheritance of the property. It was examining a complaint for trespass and assault. All what the plaintiff had to prove was that she was in possession of the property when the alleged trespass and assault were committed by the defendants. Since her possession had not been disputed by the defendants, the latter had virtually lost the case when their notice of justification was rejected by the court. When it was shown that they had no legal authority, their actions amounted to nothing else but trespass. Their plea of not guilty then became unsustainable. They had by their unjustified action forced the widow to leave the house and take shelter in the Durgah. It was further shown to the court that while there she was rigorously treated by the Patna Council on the advice of the defendants.[1]

Since the court was following the English law of evidence, verbal testimony as to written evidence, shown to be in existence, was not admitted. Consequently the defendants could not give oral evidence to prove that the estimated damages were much higher than the actual value of the property according to the inventory.[2] Since the inventory was shown to be in existence but not produced before the court, the court did not admit oral evidence to prove its contents.

The judgement of the court was given for the plaintiff on 3 February, 1779. She was awarded Rs. 300,000 damages and Rs. 9,208—8 costs, the total equivalent to thirty four thousand pounds.[3] From the letter of George Bogle, commissioner of law suits, to the Governor-General and Council, dated 4 February, 1779, we find that the property

[1] Law, a member of the Patna Council, admitted this point later before the Touchet Committee. *Touchet Committee Report*, 12.

[2] Law Consults., R. 166, Vol. 82, the inventory, 275-318.

[3] *Touchet Committee Report*, 1781, 9.

of Sahbaz Beg was decreed by the court to be made over to his brother Allum Beg, who having arrived from Kabul had taken possession of the estate.[1]

Post-trial Events

Immediately after the judgement, the Governor-General and Council directed the Chief and Council of Patna to send down to Calcutta all the defendants for whom the Company had given bail. Accordingly the defendants were sent down to Calcutta. Due apparently to old age and illness, Qazi Sadee expired during the journey. He was an 'infirm old man, about sixty years of age, and had been ill for some time before'.[2]

The defendants were committed to the common prison where they remained for a period of two years. They were released when the Company as required by the Act of 1781, executed, on 12 August, 1782, a bond for the balance of the judgement debts in favour of Naderah Begum.[3]

The Governor-General and the Council sought the opinion of Sir John Day, the advocate-general of the Company, on preferring an appeal in the Privy Council against the judgement of the Supreme Court. He strongly advised against the appeal.

His advice was based on the untenability of the defendant's case. Commenting on the evidence as given by both parties, he wrote—'Thro' the whole of the case before me, there appears such a complication of desperate villainy, such a labyrinth of guarded and deliberate perjury, of wary fraud, and subtle circumvention, as baffle all effort to trace, and detect them,' and added '. . . that to me it seems as if the most able, and upright judge might, without the smallest impeachment of his understanding, or violence of his conscience, have decided either for or against the Authenticity of those instruments. . . .'[4]

However, the Council in its proceedings of 20 August, 1779, resolved that the petition of appeal be filed.

[1] Revenue Consults., R. 50, Vol. 15, 629-33.

[2] *Touchet Committee Report.* Law's deposition, 13.

[3] H. M. S., Vol. 175. On 5 March, 1779, the Supreme Court had issued a writ of *Fieri Facious* on the said judgement against the lands, debts and other effects of the defendants. On 15 June, 1779 the Sheriff had valued the effects of the defendants to the amount of Rs. 47,574—10. Thus the balance of Rs. 261,634 remained due to Naderah Begum and it was for this balance that the defendants remained confined until the Act of 1781 directed the Company to pay the balance.

[4] Law Consults., R. 166, Vol. 82, Advocate-General's Report, 993-1011.

But no appeal was filed before the enactment of 1781. The Act of 1781 by its 27th clause, recognising that the period during which an appeal should have been filed had expired, authorised the defendants to appeal to the Privy Council against the judgement of the Supreme Court within a period of six months.[1] The sources are silent as to the actual date when the appeal was presented to His Majesty in His Privy Council. It was referred to the Lords of the Committee of Privy Council by His Majesty on 28 July, 1784. An attempt was made by Thomas White, solicitor for the respondent, to bring the appeal for hearing in 1786. But Smith, the solicitor for the appellants, did not respond to White's proposal, and the hearing of the appeal could not be secured until 1789.[2]

From the proceedings of the Privy Council in *Behdar Beg and others vs. Naderah Begum*, it appears that the Committee of the Council was attended by Counsellors of both parties on 27 March, 1789. The Counsel for the respondent prayed that in regard to the great length of time which had elapsed since the said judgement was pronounced and the appeal thereupon allowed by the said Supreme Court the said appeal might be considered as abandoned and dismissed for non-prosecution. The Committee accordingly reported to the Privy Council on 27 March, 1789 that the appeal be dismissed, and this report being read in the Privy Council on 3 April, 1789, it was resolved to dismiss the appeal for non-prosecution without costs.[3] Morley remarks that the Privy Council of the late 18th century was neither interested in Indian appeals nor did it possess the requisite judicial talents. He supports his remarks by the fact that not a single appeal from India was heard between 1773 and 1799, and from 1799 to 1833, only fifty from the Supreme Court, and none from the Company's Courts.[4]

In March, 1779, Naderah Begum directed her attorney, George Wroughton to start a prosecution against the members of the Patna Council on the same course of action as in the former case.[5] This

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Sir John Day, having been appointed under Letters Patent as the advocate-general of the Company, and arrived lately in Bengal, took charge of his office on 16 February, 1779.

[1] *Collections of Charters and Statutes*, Act of 1781, 203-207.

[2] H.M.S., Vol. 413, 123.

[3] I.P., Vol. 16271, order of the Privy Council, 3 April, 1789, 16-17. Present at the court at Windsor were His Majesty and fifteen Privy Councillors.

[4] Morley, *Digest*, 24.

[5] Revenue Consult., R. 50, Vol. 17, 24-25. This action was brought for false

action came up for trial in the Supreme Court in May, 1779.[1] The Supreme Council defended the suit. Notice of justification was given on behalf of the defendants and it was argued that the acts complained of were done by the Patna Council in their judicial capacity. The Court considered their whole proceedings illegal and corrupt. On 13 January, 1780, Impey delivered the judgement against the defendants. The plaintiff was awarded Rs. 15,000 as damages.

On the advice of the Supreme Council, the Patna Council preferred an indictment in the Supreme Court against Naderah Begum, Cojah Zekeria and others for forgery. This indictment was quashed by the Supreme Court because the accused were neither the residents of Calcutta nor directly or indirectly in the service of the Company. It may be here recalled that on the report of the Qazi submitted to them on 20 January, 1777, the Patna Council had ordered the confinement of Cojah Zekeria and four others on a charge of forgery. They had remained confined for seven months. Whether any action had been brought against them is not clear. The Touchet Committee observes in its report that no action was brought against them.[2] On the other hand, we understand from a letter of the Patna Council to the Governor-General and Council, dated 15 December, 1777, that the accused were tried and found guilty by the *Faujdari Adalat* and an account of the Court's proceedings was sent to the Naib Nazim that he might pass judgement thereon.[3] It appears that the accused had been sent from Patna to Murshidabad to wait for the decision of the Naib Nazim. While at Murshidabad they had petitioned the Supreme Court for a writ of Habeas Corpus. The Supreme Court had issued the writ against the Nazim. At this stage the Company's commissioner of law suits had mediated, and in consequence the accused had come to Calcutta previous to any judgement passed on them by the Nazim.

Observations on the trial and its consequences

Impey appears to have believed firmly that the members of the

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imprisonment caused by the orders of the Patna Council that a guard of Sepoy be placed on the widow to force her to return to Behdar's care.

[1] H.M.S., Vol. 421, 636-40.

[2] *Touchet Committee Report*, 1781, 14.

[3] Law Consults., R. 166, Vol. 79, 71.

provincial Councils were generally corrupt and that they resorted to all manner of dishonest means to enlarge their private fortunes. He believed that "these English gentlemen" at the provincial headquarters, committed extortions and rapines and administered, not law but their own will; and in all their misdoings they were assisted by their 'black agents'. Referring to the case of Bebee Sukun, which was tried on 29 March, 1777 in the Supreme Court, many months before the trial of the Patna case, Impey, in a letter to Thurlow, wrote: 'A charge without the least colour of truth was forged against her for having had, and murdered her bastard child.'[1] This was done for the purpose of extorting from her a large sum of money. This case was filed against the agents of the Patna Council and Bebee Sukun recovered damages to the amount of Rs. 33,575.

With this precedent on record, the judges when called upon to decide upon the allegations of Naderah Begum, were bound to scrutinize severely the conduct of the gentlemen of the Patna Council. They did so and were led to believe that the proceedings of the Patna Council suffered from such gross irregularities, that nothing short of corruption in the members could have occasioned them. That the proceedings of the Patna Council were irregular, indeed, according to English standards of justice, is incontrovertible. Even Hastings, who had no legal training in the niceties of law, and who, in fact, approved of the legality of the decree passed by the Patna Council, could not reconcile himself to the irregularities involved in their proceedings. In his letter to the Chief of Patna, 12 January, 1778, he wrote: 'I cannot but take notice of great irregularity in the proceedings of the law officers, whose business was solely to have declared the laws, the Dewanee Court was to judge of the facts, their taking on themselves to examine witnesses was entirely foreign to their duty; they should have been examined before the adaulat.'[2] As we have seen, it were these law officers who in fact decided upon the matters of fact and law and it was their decree which, after receiving the formal sanction of the Patna Council, was put into execution. Were these persons competent and trustworthy enough to be vested with such judicial powers as they seem to have exercised in this case? 'That they should be mean, weak, ignorant, and corrupt, is not surprising,' remarked Impey, 'when the salary of the principal judge, the Cauzee, does not exceed Rs. 100 per month; the five

[1] I.P., Vol. 16259. Impey to Thurlow, 5 March, 1779, 163.

[2] *Touchet Committee Report*, 1781, Pat. App. 7, 236.

Muftees, who compose the other members of the Bench, are maintained for that time altogether of Rs. 120.'[1] Impey did suspect strongly that Behdar Beg had bribed the members of the Patna Council and their law officers. It is also made evident from North Naylor's letter to the Board and also from Impey's certain remarks made during the course of delivering the judgement of the Court. North Naylor in his report on the case of Naderah against Law and others, dated 20 February, 1780, wrote: 'I understand that since the imprisonment of Behdar Beg, frequent attempts have been made to extort a confession from him that undermeans had been used by him to influence the Council to a decision favourable to his claims; and that a release from his confinement has been held up as the reward of the disclosure.'[2]

Looking at the constitution and functions of these provincial Councils, we find that they were ill-suited to administer justice efficiently and impartially. The Patna Council, for example, sat in two different capacities but did not maintain two separate records. And whatever records they had maintained were found by the judges during the trial to be quite incomplete. The Councillors were mainly concerned with the collection of revenue and executive matters. They had neither the time nor the qualifications to hold the *Diwani Adalat* regularly. In fact their agents decided all the civil suits. A plausible explanation for the above practice is given by Bogle in his report. He argues: 'That the number of Englishmen acquainted with the language of this country is very small and even of these, few are so far master of it as to be able to write it, or to read it without difficulty; and if no fact were to be examined but by them, or in their presence, and no cause determined until all the papers, accounts and evidences had been translated, the administration of justice would be almost entirely stopped.'[3] According to Bogle's calculations there were at that time in India not more than two to three thousand Englishmen. A very large proportion of them were engaged in different offices at the Presidency, and the greater part of the remainder were involved in collecting a revenue of three millions. Therefore the number of Englishmen qualified for the administration of justice did not exceed thirty.[4] If these thirty were to administer justice to ten to twelve million inhabitants of the

[1] *Ibid.*, 261.
[2] Law Consults., R. 166, Vol. 83.
[3] *Ibid.*, Vol. 82, 172-73. [4] *Ibid.*, 169-70.

provinces, it would have been impossible to carry on the Government of the country.

Bogle was right in his calculations. But it did not follow that the condition could not have been improved.

It was lawful for the Governor-General and Council to set up a network of courts in the provinces, appointing qualified and competent Indian judges at reasonably handsome salaries in the courts of first instance, and laying down the procedure for appeals to and supervision by a superior court. Impey and his colleagues were shocked to notice in the Patna case that the first and the final decision virtually lay with the poorly paid and grossly incompetent Qazies and Muftis, who were highly susceptible to corruption and influence.

It was not, therefore, a 'thirst for jurisdiction' or lust for power, as James Mill thought, that incited the English judges to interfere with the administration of justice in the provinces.[1] It was the corruption in the members of the Patna Council, and their utter lack of interest in the administration of justice that induced the judges of the Supreme Court to interfere in this sphere. James Mill's knowledge of the Patna case was scanty, solely derived from the *Report of the Touchet Committee*. Even this report he does not seem to have examined thoroughly. Had he carefully perused George Bogle's report of the case and the judgement of the Supreme Court, which ran to about fifty quarto pages, perhaps he would have been obliged to soften the bitterness which he usually displayed against the lawyers and the judges.

Impey was opposed not to the powers of the provincial Councils but to the irregular exercise of those powers. He was dismayed not by their decision on the deed of gift but the way it was arrived at. He found that the provincial Councils and their law officers followed no rules of procedure, no laws of evidence. The administration of substantive law without any procedural law to guide the judges and the parties, was bound to be biased and discretionary. For example, we can look at the nature of evidences admitted by the Qazi and the Muftis during their inquiry into the authenticity of the *Hibbanama* and the *Ekrarauma*. In order to prove that the deeds were forged after the death of Sahbaz Beg Khan, Behdar Beg stated that a little while after his death, an Armanian, Malcolm, was told by one Gyrut Beg that the deceased had executed no such deed in his lifetime. Instead of asking Malcolm to appear before them the law officers sent him a note, to which they got his reply in which Malcolm

[1] Mill, *History of British India*, Vol. IV, 332.

admitted that Gyrut Beg had made such a statement to him. The messenger who had carried the note to Malcolm, verbally deposed that he had been further informed by Malcolm that Gyrut Beg had also said that the deeds were written after the death of Sahbaz Beg.[1] All these evidences were admitted by the Qazi. The defendant did not get a chance to cross-examine Malcolm and Gyrut Beg. Furthermore, none of the five persons who had witnessed the *Hibbanama*, was examined by the law officers.[2] All of them were alive and, at least two of them, Zekeria and Enayatulla, were available. This serious omission led Impey to believe that the law officers did not see the original deeds, that these deeds were produced for the first time at a later stage before the members of the Patna Council. So before the originals came to light the Qazi had made his report and the Patna Council had passed their order thereon.

It is difficult to form a definite opinion on the authenticity of the deeds. Their authenticity was not directly involved in the determination of the case by the Supreme Court. Hence the judges did not inquire into and arrive at any conclusion about them. For the same reason there is lack of sufficient evidence on the matter.

On one hand it appears that Zekeria was trying to secure attestations to a document after the death of Sahbaz Khan. Was it a copy of the original which he wanted to be attested or the original itself? Zekeria deposed in the Supreme Court that it was the copy he had made from the original which he wanted to be attested before sending it to Kabul. Again, it appears that the deeds were not produced by the widow within three days after the death of the deceased. The law and custom, as alleged by Behdar Beg, enjoin that such deeds be published within three days. Furthermore, why did Sahbaz Beg Khan, owner of rent free lands worth forty or fifty thousand rupees a year, houses and property at Kabul and Patna, and living in the city of Patna where he had several friends of status and learning, choose men of low rank, some of whom could not even write, when he decided to leave his property to his wife by a deed?[3]

On the other hand, we notice that the *Hibbanama* had a genuine

[1] *Touchet Committee Report*, 1781, Pat. App. No. 2, 229-30.

[2] The *Hibbanama* was witnessed by Zekeria, Gyrut Beg, Enayatulla, Qazi Mouzzam, and Haji Muhammad Avaz. Except Enayattulla the same persons had witnessed the *Ekrarauma*. Law Consults., R. 166, Vol. 82, The deeds, 705-709.

[3] Heji Muhammad, Qazi Mouzzam Beg and Gyrut Beg deposed during the trial that they could not write.

appearance. There are altogether four donees. Cojah Zekeria is to be kept at all times 'in food and raiment whether in service of the Beguam or in the acquisition of his learning'. Then comes Behdar Khan, who is to be given Rs. 500 annually on the condition of service and obedience. Third is the son of the uncle of the donor, who lives in Kabul and is to get Rs. 20,000 'out of whatever sums have been sent to Kabul'. Finally comes Naderah Begum, who is to receive the rest of 'his property in India and the remaining lands in the country of Kabul, the latter to be bestowed at her will'. If this *Hibbanama* was forged by Cojah Zekeria after the death of Sahbaz Beg Khan, it was forged for very little apparent return. He did not get any share in the property. All he got was food and clothing. Furthermore, we find that Sahbaz Beg Khan married at an advanced age and Naderah was young at his death. Taking into consideration the attachment which an old husband often feels for his young wife, if seems highly probable that he had intended to leave his property to his wife. Again, it appears that during the early proceedings of the case the widow behaved and protested like a helpless and aggrieved person whose just and legal rights had been violated. She left the house in protest and did not accept her fourth share when everything seemed to have been settled by the provincial government in favour of Behdar Beg.

Much has been said on the harshness involved in the imprisonment of the judgement-debtors. Wilson argues that both Muhammadan law and modern English law, authorise imprisonment of a judgement-debtor only when he has the means of paying and will not pay.[1] But he seems to have overlooked the fact that the case was defended by the Company and it was the Company who paid the damages. The defendants do not seem to have suffered any pecuniary loss. On the contrary, a sum much larger than what they used to receive as their monthly salary was given by the Company to the Muftis per month during their period of confinement. At Patna they used to receive Rs. 24 each, per month. The Board gave them, during their confinement, Rs. 200 each, per month.[2] After their release they were promoted to higher ranks in the service of the Company. And under the Act of 1781 more than adequate compensation was granted to them.[3]

[1] Wilson, *Anglo-Muhammadan Law*, 94-108.

[2] Revenue Consults., R. 50, Vol. 19, Petition of the Muftis.

[3] 1st. Report, Select Committee, 1782, Minutes of the Court of Directors, 27 June and 7 December, 1781, 380-81.

The Muftis were awarded £5,000 each and Behdar received £2,000. The living children of the deceased Qazi were to receive £5,000, and his male relation, if any, £1,000. His widow was to receive a life annuity or pension equal to the amount of his salary, besides a lump sum of £1,000. Thus we find that none of the parties involved in the case suffered any pecuniary loss. Naderah Begum received damages for loss of her inheritance, Behdar and his father got the whole property and the law officers received adequate compensations and rewards. The only loser was the Company.

The immediate consequences of the trial were filing of a few petitions from the Bihar farmers and a marked caution and care in the proceedings of the provincial Councils.

Referring to such petitions in his letter to Thurlow, 30 April, 1779, Impey wrote: 'Petitions are procured here in the manner they are, to serve political purposes in England, with this difference only that the influence and power to procure them is greater.[1]

A remoter and rather unfortunate result of the trial was the second charge in the article of impeachment which was based on the Patna case and exhibited against Impey in the House by his accusers. We have observed elsewhere how the motion of Sir Gilbert Elliot to impeach Impey on the first charge, was defeated by a vote of 73 against 55. Of the remaining five charges, the one and the only one on which a faint attempt was made to impeach Impey was the second charge, grounded on the trial of the Patna Case.[2] The article of impeachment among other things charged Impey of high crime and misdemeanour, for having illegally tampered with the jurisdiction of the *Diwani Adalat* of Patna, for having arbitrarily rejected Behdar's plea of jurisdiction and defendant's notices of justification, for having erroneously applied the English maxim of 'delegatus non potest delegare', and having maliciously introduced the English law of evidence and refused to admit many evidences and documents, which were attempted to be produced on the part of the defendants. And in all these misdoings, the article avers, Impey was 'actuated by a greedy, corrupt, and tyrannical motive

[1] I.P., Vol. 16259, 248.

[2] The second charge runs into twenty pages of quarto size and is couched in a most defective style. It is most unprecise, and suffers from unnecessary repetitions and distortion of facts. A basic mistake is committed with regard to the year the action of trespass was brought in the Supreme Court. The year as stated is 1779. It should have been 1777. (*Articles of Charge*, 8-27.)

of drawing all judicial proceedings in cases in which he had, and in cases which he had no jurisdiction, within his own grasp.'

On 27 May, 1788, an attempt was made by Sir Gilbert to move the House to consider the second charge against Impey.[1] This move was opposed by the attorney-general on three grounds; first, that if it was any charge against Impey it must prove equally a charge against the whole Court; second, that in 1780 the subject of the charge became an object of Parliamentary consideration, and an Act had been passed upon it; third, the case was coming up for hearing before the Privy Council. John Anstrucher and Edmund Burke, referring to the bond of East India Company which had been forfeited on the expiry of five years in January, 1787 accused the Company of having entered into collusion with Impey to delay the hearing of the case in the Privy Council. Edmund Burke warned the House not 'to hold out to India, that Sir Elijah Impey, being one of their own colour, one of their gang, as it were, should upon this account be protected by them'.[2] On William Pitt's suggestion that the House should wait for the decision of the Privy Council in the appeal lying before it, it was resolved 'that this House will, upon this day three months, resolve itself with the said Committee'.[3]

In the light of what we have observed earlier, the above charges do not seem to hold water. It appears that Impey's main motive was to protect Indians from the oppressions of the Company's servants and their Indian agents. In extending to Indians the protection of the Supreme Court he did not infringe the Act of 1773, for the Act and the Charter had already put the Company's servants under the jurisdiction of the Supreme Court. The accusers of Impey were motivated by considerations of party politics more than by an acute sense of justice for the Indian people. Writing to his wife on the impeachment of Impey, Sir Gilbert Elliot (later Lord Minto) hinted, 'Dundas told me yesterday he thought him (Impey) worse than Hastings, and that I should find no difficulty in carrying on the prosecution. *The fact is Dundas wants to dispose of his place*'.[4]

[1] Parl. Debates., Vol. 27 (1788), Cols 599-604.

[2] *Ibid.*, 602. [3] *Ibid.*, 604.

[4] Minto Papers, Lord Minto to Lady Minto, 20 February, 1787. Italics mine: Impey retained the Chief Justiceship of Bengal until 1787 after his recall to England in 1783.

CHAPTER VI

THE OPPOSITION TO THE SUPREME COURT: THE TOUCHET PETITION, 26 FEBRUARY, 1779

Provincial Councils

The example of Naderah Begum was followed by suitors from other provinces. Encouraged by the equalising principles which the judges of the Supreme Court were tending to establish between the rulers and the ruled, Indians who felt themselves oppressed started petitioning the Court for protection against the Company's provincial officers. In granting relief to the petitioners the judges were virtually checking the arbitrary and abusive exercise of powers. The provincial councillors deeply resented the curtailment of their hitherto unchallenged powers and turned into avowed enemies of the Supreme Court.

Looking into several of the cases which came up to the Supreme Court during and after the trial of the Patna case, we find that all branches of provincial administration suffered from a gross abuse of power. The provincial councillors had not only abandoned their judicial functions, but they were also arbitrary and irregular even in the exercise of their revenue functions. For example, in *the case of Durgacharan Chakravarti against the members of the Calcutta Committee of Revenue*, (1777-79), the defendants, who had imprisoned the plaintiff for the arrears of revenue, on being sued in the Supreme Court by the plaintiff for false imprisonment, could not even produce a written statement to prove that the farm was in arrears.[1] They first produced their writer who orally deposed that the amount due under the agreement was not paid by the plaintiff. Since his statement was unsupported by a written statement of account it was not considered as a good evidence. Thereupon, the accountant of the Calcutta Committee was called. He stated that the farm was in arrears but on his examination he confessed that it was not he but the banker who received the revenue from the farmers. The banker had been dismissed by the Company, hence he could not be called. The Supreme Court was obliged to grant damages to the plaintiff.

[1] *Touchet Committee Report*, 1781, Gen. App. 29, Bogle's Report of the Case, 7 March, 1779, 170-72.

It shows that revenue accounts and records, on which alone in justice the revenue officers should have based their claims, were badly maintained. The necessity of keeping authentic records to support revenue demands was not realised by the revenue officers, until their autocratic powers to imprison a revenue-debtor for an indefinite period without bail or trial was questioned by the Supreme Court. Indeed, coercion had been so far a convenient means of collecting revenue, but it was opposed to the 'rule of law'. The judges, therefore, were united in putting an end to this practice.

In *the case of Sarupchand against the members of the Dacca Council*, (1777), Justice Le Maistre remarked, 'The inferior officers and servants of the East India Company, at a distance from the Presidency, should exercise a ministerial power of imprisoning, without bail or manprize, all such persons as they shall deem indebted to the Company for rents and revenues, strikes me as the most arbitrary abuse of power.'[1] Sarupchand was a treasurer of the Dacca Council and in that capacity he owed to the Company a sum of Rs. 66,745, out of which a sum of Rs. 20,000 had been borrowed on bonds from him by Shakespeare, a member of the Dacca Council. The Dacca Council asked him to pay the whole balance in cash. Sarupchand offered to pay Rs. 20,000 in bonds on Shakespeare and the rest in cash. It was a very fair offer. But the Council insisted on the payment of the whole sum in cash. On the plaintiff's failure to comply with their demand, they dismissed him from the treasureship and put him in prison. The plaintiff remained confined for about six months until his release was secured by a writ of Habeas Corpus from the Supreme Court. Justice Hyde, who issued the writ, was infuriated at the conduct of the Dacca Councillors, who, he believed, had tried to prevent the plaintiff from moving the Court for the writ.

That the Dacca Councillors were dead opposed to the Supreme Court and its officers, is further evinced by their quarrels with Peat (1777, July-October) whom the Supreme Court had stationed in the district of Dacca to act as Master-Extraordinary and Attorney of the Supreme Court.[2] As a great number of persons at Dacca and elsewhere were subject to the jurisdiction of the Supreme Court, his stay there was meant to enable the suitors to give affidavits and seek legal assistance from him without incurring the trouble of

[1] *Ibid.*, 140.

[2] Peat had then been for three years in India; first he was a clerk to Hyde, then attorney at Dacca. Later he was an advocate in the Supreme Court.

coming to Calcutta. He also acted as deputy-sheriff and in that capacity executed the processes of the Supreme Court. He was at that time about twenty-one; quite youthful and assertive, and saturated with grievances against the corrupt administration of criminal justice in the division of Dacca. He believed that justice was frequently and notoriously set to sale to both parties in a suit, and the officers of the Dacca Court were notorious for their corruption, ignorance and incapacity. He was held with respect and veneration among the Indians and such distinctions were paid to him which had never been shown for the members of the Dacca Council.[1] According to Captain Cowe he was treated by the Indians as an agent or Vakil of Impey.

Peat's regular presence in the district seemed to discomfort the members of the Dacca Council.[2] He vigilantly watched the day to day proceedings of the Dacca Council, advised disheartened creditors to bring regular suits in the Supreme Court against their debtors, who in most cases were influential farmers and zamindars, and against whom no redress could be had in the provincial *Adalats*. The Dacca Council was indisposed to suffer such checks on their exercise of absolute powers. The first occasion for a direct encounter between Peat and the Dacca Council arose when the former interfered in the administration of criminal justice.

At the instance of the Dacca Council, an English tailor, Francis Ford, was arrested by the Indian magistrate of the criminal court of Dacca.[3] The accused, it was alleged, had flogged an Indian procuress on his refusal to supply him with girls. In referring the case to the *Faujdari Adalat* the Dacca Councillors showed their ignorance of the then existing law, under which the British subjects could be prosecuted for any criminal offence only in the Supreme Court at Calcutta. Peat interfered and the accused was released next day. The Dacca Council strongly protested to the Supreme Council against Peat's interference and the latter consoled them by asserting that during his stay at Dacca, Peat should be treated on the same footing as any other individual, meaning thereby that no

[1] *Touchet Committee Report*, 1781, Depositions of Rous and Capt. Cowe before the Committee, 20-21. Charles William Boughton Rous was then Chief of Dacca and Capt. John Cowe was then stationed at Dacca as Commander of Militia.

[2] *Ibid.*, Letter of Dacca Council to Supreme Council, 21 July, 1777. The then members of the Dacca Council were C.W. Boughton Rous, J. Hogarth, and J. Shakespeare.

[3] *Ibid.*, Dacca App. 12, 329-36.

importance should be attached to the offices he held under the authority of the Supreme Court. Thus emboldened by the assurance of the Supreme Council, the councillors of Dacca seized the earliest opportunity violently to oppose the processes of the Supreme Court.

On a charge of misdemeanour an Indian named Khyru had been arrested and put into confinement for a long time without trial by the officers of the Dacca *Faujdari Adalat*.[1] On his behalf the Supreme Court was moved to issue a writ of Habeas Corpus in July, 1777. In order to evade the writ the Dacca Council transported the prisoner from Dacca to Murshidabad under the pretext that the prisoner had been summoned by the Nawab to be tried for another unspecified offence. However, the prisoner somehow made his escape to Calcutta in September, 1777, and filed a suit in the Supreme Court against one Jaggarnath, an officer of the Dacca *Faujdari Adalat*, for false imprisonment and trespass. The Supreme Court issued an order for the arrest of Jaggarnath. Peat, acting as the deputy-sheriff tried to enforce the order of the Court. It appears that Jaggarnath, who had full support of the Dacca councillors, tore up the order of the Supreme Court when it was shown to him by Peat and when he was arrested the Dacca Council employed the militia to release him. The fray occurred on 20 September, 1777, in the house of Syed Ali Khan, who was the chief officer or judge of the Dacca *Faujdari Adalat*. In the course of the struggle, one Mir Hussain Ali, brother-in-law of Syed Ali Khan was seriously injured by a pistol shot from Peat. Counter complaints were filed to the chief of the Dacca Council by Syed Ali and Peat. The chief of the Council stationed a military guard at Peat's house. It was a victory for the Dacca Council over Peat and the Supreme Court. Except for a few letters exchanged between the Dacca Council and the Supreme Council, no further action was taken in this case.

It may now be asked what authority the Supreme Court possessed to interfere with the administration of criminal justice in a case in which neither the complainant nor the accused was a British subject.

Technically the Supreme Court had no authority over the Company's courts—*Diwani*, *Faujdari* or Revenue. But the Court was certainly authorised by the Act of 1773 to entertain suits and hear complaints against the Company's servants. It was, therefore, in their individual capacity and not in their official capacity as the

[1] *Ibid.*, 310-11.

judge of a civil or criminal court, that the servants of the Company were summoned to appear in the Supreme Court and asked to answer to the charges of corruption that were generally levelled against them. Indeed, it was submitted by the councillors that the officers of the *Faujdari* court were the servants of the Nawab and not of the Company. The judges of the Supreme Court always rejected this contention, because they did not believe in the myth of the Nawab's sovereignty and they very well knew that the officers of the *Faujdari* court were appointed and paid and their functions supervised by the provincial officers of the Company.

It is probable that Peat might have committed certain excesses in the execution of the processes of the Supreme Court. 'I shall not take on me to say, that no abuses have been committed by the sheriff's officers,' wrote Impey to Weymouth, 'but I will, that they are in proportion to our business, much less frequent here than in England'[1] And he wondered why no complaint had so far been made to him against the sheriff's officers.[2]

In his inquiry into the complaints against the judicial proceedings of the provincial councils, Impey maintained a difference between 'manifest oppression' and 'irregularity'. The provincial councillors were held liable for manifest oppression and corruption, but not if their judicial proceedings suffered from irregularities only. This point was enunciated in the case of *Gowry Chand Dutt against William Hosea and others, 1779.*

A few months after the determination of the Patna Case, the plaintiff brought this action in the Supreme Court against William Hosea, a member of the Murshidabad Council and Roy Dullaroy, the *Diwan* of that division, for assaults and imprisonment committed by the defendants in the execution of a degree of the *Diwani Adalat.*[3] The trial started on 19 June and was defended by the Governor-General in Council.

The circumstances which gave rise to this action in the Supreme Court may be briefly summarised as follows:

Gowry Chand had filed a suit in the *Diwani Adalat* of Murshidabad against one Mirza Muhammad Ali, father of Mirza Jalleel, for the

[1] *Ibid.*, 372.

[2] I.P., Vol. 16259, Impey to Dunning, 15 June, 1780, 270-281.

[3] *Touchet Committee Report*, Gen. App. 4, 130-31. The then members of the Murshidabad council were—Edward Baber (chief), William Hosea, John Hogarth, Robert Adair and George Richard Foby. (H.M.S., Vol. 422, 796.)

recovery of a certain sum of money. Middleton, the then chief of the provincial council, referred the case and not the original plaint to the *Adalat*. Long afterwards, David Anderson, not finding the petition, asked the plaintiff for a new one and the plaintiff accordingly filed on 23 October, 1776, a new petition, this time against Mirza Jalleel, for, his father was by then dead. In this second petition, the plaintiff referring back to his original plaint asked for the recovery of a sum of Rs. 700, being balance of several accounts between him and the defendants.[1] The suit was brought before John Hogarth sitting as the superintendent of the *Adalat*. During the course of the investigation the defendant alleged that he was not indebted to the plaintiff and averred that upon the balance of the said account the plaintiff was indebted to him in the sum of Rs. 18,070. The case was proceeded with and it was adjudged in the same cause by George Richard Foby, the acting superintendent of the *Adalat*, that the plaintiff should pay to the defendant a sum of Rs. 11,076, annas 8, pies 9.

It appears from Khalsa-records that after the above decree was passed against Gowry in the suit which he himself had instituted against Mirza Jalleel, he came to Calcutta and filed another suit against Mirza in the Equity side of the Supreme Court.[2] Nothing seems to have come out of this suit except that Gowry and Mirza had to remain in Calcutta for a long time. When Gowry went back to Murshidabad, Mirza petitioned on 9 April, 1778, the superintendent of Khalsa at Calcutta, praying that the chief of Murshidabad be asked to execute the decree which the *Adalat* of that division had passed in his favour. Thereupon a series of correspondence passed between the superintendent of Khalsa and the chief of Murshidabad. The decree was ultimately executed by Hosea and the *Diwan;* Gowry was imprisoned on 26 September, 1778 and he remained in the prison until the present action was brought in the Supreme Court some time in the First Term of 1779. He remained in the prison during the trial; when he was released is not known.

From the above account of the circumstances relating to the case, certain inferences can be made.

First, the proceedings of the *Diwani Adalat* of Murshidabad suffered from gross irregularities.

'In the present case, the Committee of Moorshidabad seem (with-

[1] H.M.S., Vol. 422, 796-800.

[2] *Ibid.*, Vol. 421, Khalsa records, 527-40.

out intending anything oppressive or unjust) to have gone those lengths of irregularity, for which, under all the circumstances of the case, it will not be an easy matter to frame that defence which may promise success—A brings suit against B to recover a small sum, stated to be due upon an unadjusted account—B affirms, that a much larger sum is, in fact, due from A to him; they each adduce their proofs; the cause is heard by different judges;...and judgement goes for defendant; the operation and effect of which are not merely, that he shall be discharged from plaintiff's demand, but that plaintiff shall pay him a much larger sum, in satisfaction of a claim, which formed no part of the original cause,'—so commented Sir John Day, Advocate General of the Company when he was asked by the Supreme Council to give his opinion.[1]

Second, though the Murshidabad Committee in the earlier stages of their proceedings had acted quite irregularly, their later proceedings, relating to the execution of the decree, teemed with caution and circumspection. This was caused by the proceedings of the Supreme Court in the Patna Case.

Third, the acts complained of in the present case by the plaintiff were done by the members of the Murshidabad Council in their executive and not in their judicial capacity.

'It was well worth the consideration of the Board, that the Acts which form the foundation of the Plaint in the Moorshidabad Case, were done, not in the Adaulat (for that had long discontinued its functions, and shut its doors against the people) but in the exercise of the executive power of the Government: A circumstance which if established in proof, constitutes their illegality, and must, in my opinion, condemn them.'—So were reminded the members of Supreme Council by John Day.[2]

Here is brought to our notice the abuses of vesting in the same body the executive and judicial powers of the Government. Day, who was a friend and adviser of the Company, found that one of the provincial councils had long since ceased to sit in *Adalat* and their so-called judicial acts were in fact done in their executive capacity. The way the original plaint of Gowry was passed by one member of the Murshidabad Council to the other and the manner in which the final decision was arrived at, testify to what Day stated in his above letter.

[1] *Ibid.*, 130-32.

[2] Revenue Consults., R. 50, Vol. 18, Proceedings of 1 June, 1779; Sir John Day's Report of 31 May, 1779; (no paging).

Fourth, Gowry brought the present action in the Supreme Court not with a view to recovering large amounts of damages from the members of the Murshidabad Council but with a hope to secure his release from the long confinement.[1]

Subsequent to the plaintiff having brought this action in the Supreme Court, the Governor-General and Council, with a view to explore proper grounds of defence, referred the Case to Day, who, as observed above, commenting at a great length on the irregularities involved in the proceedings of the Murshidabad *Adalat*, advised that the suit be compromised with because it could not be defended except on very feeble grounds.[2] But the Council, being of the opinion that the suit ought to take its course, for the purpose of ascertaining, by a legal decision, whether the *Diwani* Courts were or were not competent in their judicial powers, decided to proceed with the defence. On the Board's stand Day commented in the following words: 'The truth is, that their competency has never been denied, neither has the exercise of their powers (so long as they have acted up to the end and principle of their institution) been once questioned. It is the abuse and not the exercise of those powers, which, to appearances, had brought their acts under the revision and control of a Superior Court.[3]

But Day's apprehension did not come true. The Supreme Court, being convinced that the plaintiff was confined under a decree of the provincial *Adalat*, declined any inquiry into the irregularity of their proceedings, and hastened to give judgement for the defendants with costs. Impey maintained that:

'In case of suits instituted before the provincial councils, except in cases of manifest corruption, the Court will not enter into the regularity of the proceedings.'[4]

Thus, Impey set a limit to the jurisdiction of the Supreme Court by maintaining a distinction between irregularity and corruption. How were the proceedings of the Patna Council corrupt, and those of Murshidabad Council only irregular? The members of the Patna Council had delegated their judicial powers to their law officers. This was tantamount to corruption and a gross neglect of duty on

[1] H.M.S., Vol. 421, North Naylor to Board, 19 June, 1779, 512.

[2] *Touchet Committee Report*, 1781, Day's Report, 21 March, 1779, Gen. App., 128-29.

[3] Revenue Consults., R. 50, Vol. 8. Proceedings of 1 June, Day's Report.

[4] *Touchet Committee Report*, Gen. App. 4, 131.

their part. The members of the Murshidabad Council, on the other hand, had themselves inquired into the Case and passed the decree thereupon. Howsoever irregular their proceedings might be, Impey believed that they had acted within their legal rights. Here it may be observed that neither the Regulating Act nor the Charter had vested the Supreme Court with any supervising authority over the Company's Courts. Had the Supreme Court been granted a general power of supervision over the Company's Courts, the judges would have scrutinized the irregularities and procedural defects in the proceedings of the Company's Courts; and in such cases as that of Gowry Chand, they might have reversed or quashed the decree of the subordinate Court. Thus, by maintaining the difference between 'irregularity' and 'corruption' Impey tacitly recognised the fact that the Supreme Court had no jurisdiction over the Company's Courts as such; it had jurisdiction over the judges and officers of the Company's Courts in their individual capacity, as servants of the Company. Hence nothing short of manifest corruption in them would make them liable in the Supreme Court. In further support of this statement, we may cite the letter of Impey to the Earl of Rochford, dated 25 March, 1775. In this letter Impey refers to the rapidly growing population of Calcutta and a consequential increase in the number of cases filed in the Supreme Court and suggests that it would be of great ease to the judges, and of infinite advantage to the inhabitants, if a provincial *Diwani Adalat* was erected, by His Majesty's authority in Calcutta, for the determination of suits of certain descriptions between Indians. 'If established by His Majesty's authority, they might be controlled by the Supreme Court. I hardly dare to propose the same for the chief towns in the provinces at large, as the legislature did not think fit in the last act of parliament to interfere with them; but I am authorized by the Governor-General to offer it as his opinion, that the establishment of circuits to be performed by English judges through the provinces, would much contribute to the advancement of justice, and the happiness of the people.'[1] Thus, we find that Impey from the very beginning held that the Company's Courts, as such, were not subject to the jurisdiction of the Court.

G. F. Grand vs. Philip Francis, 1778-79

Philip Francis, the defendant in this case and a member of the

[1] *Ibid.*, Gen. App. 32, 187.

Supreme Council, became in later years the originator of accusations against Impey. One of the reasons why he turned into the bitterest personal enemy of Impey was the present case in which Impey and Hyde found him guilty of criminal conversation with one Mrs. Grand and made him pay to the plaintiff a large sum in damages. Dwelling on the consequences of the trial, Busteed writes: 'It will not be difficult, for instance, to show that the incident in question was "not merely a domestic episode in the life of Francis," but one, the consequences of which tended to embitter his resentment against Impey—an incentive to action on the part of so good a hater as Francis, which bore fruit, a thousandfold a few years afterwards.'[1] John Nicholls, M.P., who knew Hyde and Impey before they left for India had no doubt that the impeachment of Hastings and the accusation of Impey, both originated with Francis.[2]

In view of its important consequences on the later life of Impey, it is proposed to describe briefly the trial and the circumstances which gave rise to it.[3]

Grand, the plaintiff in the case, was a French-born British subject and had been in the service of the East India Company since 1766, first a writer, then a lieutenant and afterwards the Secretary of the salt department, Board of Trade; he held the last appointment when the present cause of action arose.[4] He had married a French

[1] Busteed, *Echoes*, 192-93.

[2] Nicholls, *Recollections*, Vol. 1, 280-84.

[3] It is surprising that Impey never mentioned the trial in any of his private letters. The plaintiff in the present case, G. F. Grand, published a 'Narrative' of his life in 1814 at the Cape of Good Hope. In that book a brief account of the Case is given. For the first time the Case was brought to the notice of the Indian readers by Sir John Kaye in an article on Francis in the second volume of the Calcutta Review (1844). Kaye derived his information from Grand's narrative. Herman Merivale, who edited the 'Memoirs of Sir Philip Francis', and Barwell Impey who wrote the 'Momoirs' of his father, have touched on this subject quite summarily. For the first time the subject received a serious and candid consideration by H. E. Busteed who consulted the original records of the trial which had been preserved among the archives of the Calcutta High Court. Certain documents relating to the subject were published in 'Bengal, Past and Present' and were later published by the Calcutta Historical Society under Appendix 2 of the new edition of Grand's 'Narrative' (1910).

[4] He held certain other petty offices which together with his main job in the salt department brought him an income of about Rs. 1300 a month. After the trial of the case, Hastings appointed him as the collector of Tirhut and Hazipur, which post he held until Hastings left India in 1785. During his collectorship he laid the foundation of the indigo factory in Bihar. Lord Cornwallis appointed

girl, Noel Catherine Werlee, on 10 July, 1777, about fifteen months before the cause of action arose. At the time of her marriage she was about three months under fifteen years of age.[1] She was a very young and charming woman. In her fair countenance there was more of feminine softness than of strength of character; the sensual prevailed over the intellectual.[2] The second wife of Philip Francis described Madam Grand as 'tall, most elegantly formed, the stature of a nymph, a complexion of unequalled delicacy, and auburn hair of the most luxuriant profusion; fair blue eyes, with black eye lashes and brows, gave her countenance a most piquant singularity.'[3]

Madam Grand was singled out in the social life of Calcutta for the marked attention of Philip Francis. He also was strikingly handsome and had a tall, erect and well-proportioned figure. He was thirty-eight at the time when the event about to be related occurred.

On 8 December, 1778, Grand went out of his house at 9 O'clock to attend a party, leaving his wife at home. While he was at the party, his servant came and whispered to him that Philip Francis was caught in his house and held by his watchman. On hearing this, Grand became agitated and sent his servant home to inform the watchman that he was coming. On his way he took with him Major Palmer, with whom he conversed on his determination to challenge Francis to a duel.[4] On reaching home, as Grand narrates in his book, he found to his great astonishment, George Shee (afterwards Sir George), John Shore (afterwards Lord Teignmouth), and an Archdeacon; all three entreating his servants to let them go.[5] Francis had in fact escaped through the interference of his three friends.

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him in 1788 as the Judge and Magistrate of Patna. This post he held until 1799 when he left India. His career outside India was a chequered one. He held an important post at the Cape of Good Hope under the Batavian Republic for a few years. It was at the Cape that he wrote his 'Narrative' which was published there in 1814.

[1] Madam Grand was born on 21 November, 1762, at the Danish settlement on the Coromandal Coast. At the time of her marriage her parents were residing at Chandernagar.

[2] *Calcutta Review*, 1844, Vol. 11, 576. [3] Busteed, *Echoes*, 200.

[4] Capt. Palmer was the Governor's aide-de-camp and Captain of his horse guards.

[5] Shee was as much in Francis' official confidence as in his private. In the dispute between Hastings and Clavering as to Governor-Generalship, when every member was represented in the Supreme Court by a deputy, Shee acted as the representative of Francis.

Next morning Grand challenged Francis to a duel. Francis refused. Grand sent for his wife's relations from Chandernagar. Until they arrived, Mr. and Mrs. Grand occupied separate apartments in the same house and did not converse with each other. When they arrived, Grand gave her leave to depart never to meet again.[1]

On 18 December, 1778, Grand sued Francis in the Supreme Court for adultery. It was an unfortunate time for Francis. He had lost Monson, Clavering and power. He had been in a minority since 1776. But he had his pen and hope. In 1778 he was hoping that the home authorities would recall Hastings and appoint him at the head of the administration. Despatches from home were eagerly awaited by both Francis and Hastings. Grand's Case might, Francis thought, produce unfavourable effects on the minds of the authorities in England. He, therefore, wrote to the Prime Minister, North, two days before Grand filed his plaint. In his letter he first assured Lord North that he would devote every faculty he possessed to the service of the Company and the Government if he was placed at the head of the Bengal Government. Then he made an artful reference to the 'scandal'—'Permit me now, my Lord, to solicit your Lordship's personal favour and protection on a point purely and exclusively personal to me, of which the meanest and most ungenerous advantage has been taken by Mr. Hastings—you will probably hear of a supposed improper connection (of which I assure your Lordship no direct proof ever did or ever can exist) between me and a French woman, whose husband is a writer here, and who I understand intends to prosecute for damages.'[2]

The actual trial did not commence until 8 February, 1779, the delay being caused by the non-appearance of George Shee, on whose evidence the Case of the plaintiff rested, and who was absconding to save his benefactor, Francis, from disgrace and conviction. On 18 January, 1779, finding that George Shee was still kept out of the way by the defendant, Impey declared from the bench that the Court was under Charter empowered to punish the absence of witnesses, 'not only by fine and imprisonment, but

[1] Grand never saw his wife after they had parted a few days following the tragedy. Before parting they talked for three hours and Grand pitied her and sincerely forgave her. Afterwards she was for some time under Francis' protection. Later she left India, went to Paris, married the French statesman, Talleyrand and retired to England with a large fortune. (Grand, *Narrative*, 86.)

[2] F.P., E. 16, 544.

by punishment not extending to life or limb, which includes whipping, pillory and the like corporal punishments.'[1] This declaration of Impey secured the immediate appearance of Shee and the trial started on 8 February, 1779.[2]

From the testimony of the principal witnesses who were examined during the trial, we can gather the following facts. For the last ten or twelve months Philip Francis had been taking special notice of Mrs. Grand in social gatherings and balls. On 7 December, that is the night before the actual cause of action arose, Mrs. Grand had been to a ball and had not returned until 11 O'clock on Tuesday morning.

Mr. Grand used to go out every Tuesday night, leaving his wife at home. The defendant knew that Mrs. Grand remained at home each Tuesday while her husband was away till midnight.

On Tuesday, 8 December, Francis walked up to his friend, George Shee's house, at 9 O'clock at night. He told Shee that he was going to see Mrs. Grand at her house. Francis then changed into black clothes which he had taken care to send to Shee's house some time before for this purpose. Shee, when asked by the Court as to why the defendant put on black clothes that night, deposed, 'I believe it was because a man in black clothes is less exposed to view at night, less liable to be seen'.[3] The defendant then took a bamboo ladder from Shee's house and left for Grand's house.[4]

By the help of the ladder, Francis got into the lower apartments of the house, leaving the ladder standing against the wall of the house. Shortly after he had secured his entrance in the house, Meerum, one of the servants of Grand, noticed the ladder and raised an alarm. Rambux, another servant of Grand, came to the spot. While both were talking in a state of surprise, the defendant came out of the lower apartment of the house, asked them to let him go with the ladder, and attempted to bribe them with gold mohars. Rambux would not let him go. He asked Meerum to go and inform Grand while he held the defendant. The defendant, while being

[1] Busteed, *Echoes*, 209.

[2] *Ibid.*, 225, George Shee on his examination admitted that he was asked by the defendant to abscond, hence he went to Purnea; that on 27 January, Francis, the defendant, wrote to him to come down to Calcutta and appear in the Court; and the defendant during the intervening period knew where the witness was.

[3] *Ibid.*, 22.

[4] Shee admitted that he had got the ladder made for the defendant at his desire.

led through the front door to an inner apartment of the house, whistled many times for help from Shee. Mrs. Grand had appeared on the scene and in vain asked her servant to set him free. While Francis was in the custody of the servant, Shee and Ducarel broke through the outer gate of the house and rescued Francis by force.[1] But the servants of Grand managed to keep them until Grand arrived with his friend Palmer.

The above account of what happened at Grand's house on Tuesday night was proved in the Court by the testimony of the eye-witnesses. The admissions of Shee and Ducarel conclusively proved what was alleged by the plaintiff. These two witnesses were the bosom friends of Francis and so they remained long after this episode.

The Case was tried by Impey, Hyde and Chambers. Impey and Hyde having found that the plaintiff's case was sufficiently proved, passed judgement against the defendant. Damages of fifty thousand Sicca rupees were awarded.[2] Chambers held that the offence of adultery was not proved, hence the defendant should not be held liable. Chambers' dissenting opinion, as published in Hickey's Gazette (1781) may be extracted from the same as follows:

'I am fully of the opinion that the charge in the plaint is not proved:

'1st—Because it appears to me that there is no proof, either positive or circumstantial, that Mrs. Grand knew of, or previously consented to, his (Mr. Francis's) coming for any purpose, much less for the purpose of adultery.

'2nd—Because there is no proof, either direct or founded on violent presumption, that they were actually together, much less was there any proof that they committed any crime together.'[3]

Chambers' dissenting opinion seems to have been grounded on the lack of direct evidence to prove that Mrs. Grand had asked Francis to meet her that night and that the object of the meeting was fulfilled. Indeed, there is no direct evidence to prove the above facts. However, there are convincing circumstantial evidences to prove that

[1] Shee admitted that on hearing the noise in the house of Grand, he thought the defendant had been caught. He therefore ran to Ducarel's house, got him out of his bed and both ran to rescue Francis.

[2] F.P., E. 16, 68.

[3] *Hickey Bengal Gazette*, 1781 (January) to 1782 (March), No. V. 1.

Francis had entered the house not as a trespasser but as an invitee and that they were together for some time, say, for half-an-hour.

The evidence of Anna Lagoorda, the female servant of Mrs. Grand, throws some light on this point. After Grand had left the house at 9 O'clock she was sitting with Mrs. Grand in one of the rooms of the ground floor of the house. She asked Mrs. Grand to undress and retire. Mrs. Grand replied that she would wait until Mr. Grand came home at 11 O'clock. Evidently she did not want to undress, whether she wanted to wait for Grand or Francis, is a matter of conjecture. This much is obvious that she deviated from her usual routine and persisted in waiting. After some time Anna was asked by Mrs. Grand to go and fetch a candle. Accordingly Anna left the room. When she returned, she found the room locked from the inside. She knocked at the door and called for her mistress but there was no response. She then retired into the servant's apartment and there she told Meerum what had happened. Meerum then started his usual rounds of the house. He found the ladder and shortly afterwards Francis appeared on the scene. From Anna's story it can be inferred that Mrs. Grand had some knowledge of Francis' possible visit to her, and Francis was with her during the time intervening between the locking of the room and the discovery of the ladder, which may be calculated to be not more than half-an-hour. Whether adultery was committed in that time is doubtful. However, this much is certain that there existed between Mrs. Grand and Francis some sort of licentious relationship before Francis was caught on that night. Francis maintained this relationship, after Mrs. Grand was divorced and sent back to Chandernagar, and until she went back to France and became Lady Talleyrand. Mrs. Francis, while giving her own version of the episode, admits that her husband's interests in Mrs. Grand had melted into love.[1] In his depositions before the justices of the Supreme Court, Shee admitted that for the last nine months, Francis had been taking particular notice of Mrs. Grand, that at a ball held at Francis' house, the latter danced with her a country dance and paid no attention to any other lady present at the ball. Another point to be observed in this connection is that on the night of the occurrence Mrs. Grand pleaded with her servant for the release of Francis.

We may turn to examine Francis' reaction to the judgement of the Court.

[1] Parkes, *Francis*, Vol. 2, 146-47.

While the Case was being tried Francis seems to have been certain of his success. On 16 February, 1779, he wrote to Godfrey—'I am assured by my Counsel, who are the first men in their profession here, that not the shadow of a proof exists against me, and that there is not a doubt that the plaintiff will be non-suited.'[1] The absence of any direct evidence to prove adultery might have made him hopeful of his successful defence.

After the judgement was delivered he took the earliest opportunity to inform his friends of his resentment against the conduct of the two judges, Hyde and Impey, and of his determination to appeal against their judgement. What he resented most was probably not the large amount of damages he was held liable to pay, but the brutal party politics which he sensed lay at the root of the prosecution. 'I do not regard the money, because six or eight months more in Bengal sets that matter to right,—but I am not and will not submit to the barbarous and brutal persecution which I know is at the bottom of this business.'[2]

If Francis really believed that the charges were not proved and the judgement was biased and unjust, why did he not appeal against the judgement? We find that in the beginning the Court was moved to grant appeal in the Case but subsequently the whole idea was dropped. On 10 March, he wrote to his friend Godfrey explaining why he had withdrawn the appeal: 'My appeal was drawn up and read this day in the Court, but mature considerations and the advice of some experienced men have induced me to withdraw it. All men agree that I have been most iniquitously treated; but what is my remedy? Another suit with enormous expenses attending it. My mind to be kept in anxiety for two or three years longer, my reputation in the meantime torn to pieces in the newspapers, and after all, as judges are constituted, who can answer for the event? Sir Elijah Impey and the Chancellor are sworn friends—you see the consequences.'[3]

It also appears that Francis sent to some of his trusted friends each a copy of Chambers' opinion. This was obviously meant to let them know and through them others, that at least one of the judges held that the charges were not proved. Enclosing a copy of Chambers' opinion to his letter to Doyly, he wrote, 'I now enclose you another

[1] F.P., E. 16, Francis to Godfrey, 16 February, 1779, 633.
[2] *Ibid.*, 686. [3] *Ibid.*, 689-90.

copy of the conclusion of that opinion, which I am sure you will make use of to my advantage, I mean, among my friends; for as to my enemies, I will not attempt to turn their hearts.'[1]

It may here be observed that there existed a close personal relationship between Francis and Chambers. Francis had secured this friendship long before the trial of the present Case. He had been trying to secure a seat in the Council for Chambers. As Impey and Chambers both were tapping all their individual resources to get a seat in the Council, it was quite natural for Chambers to try to win over Francis at a time when he could get no better man to serve his end. A definite start towards closer relationship was made in the October of 1777, when Chambers, in reply to an offer of friendship and confidence from Francis, wrote—'I write thus with the most absolute reliance on your honour, and must request that the purport of this letter may not be communicated to anyone, particularly not to either of the other judges, in whom I have no more inclination to place confidence than in the Chief Justice.'[2] In the same letter Chambers desires to be of some practical help to Francis by becoming one of the members of the Council, of which event he appears to have been quite hopeful.

The friendship of Chambers and Francis, unlike that of Impey and Hastings, never suffered a break and continued till the end of their life. Though Francis could not secure for Chambers a seat in the Council, he tried his level best, after his return to England, to exculpate Chambers from the charges against his having accepted the Chief Justiceship of Chinsura and also to secure for him the Chief Judgeship of the Supreme Court.[3]

This intimate friendship may explain why Chambers ignored the most convincing circumstantial evidence, insisted on direct proofs and gave a dissenting opinion.

All the same, Francis tried to save his face. Chambers' opinion came readily to hand. He took full advantage of his friend's testimonial, forwarded it to his friends for wider circulation, without denying specifically any of the charges. He told them that the whole question had a political context. And to cap it all, a petition of appeal was drafted, ostensibly to be forwarded to the Privy Council, but really to be read aloud in the Supreme Court and then withdrawn. He did not want to fight the issue. Yet, he wanted the people to know that he could fight it successfully.

[1] *Ibid.*, 729. [2] *Ibid.*, F. 4. 233-34. [3] Busteed, *Echoes*, 233.

Francis was subdued and embittered. This episode made his further stay in India uncomfortable. He wrote to his friend that nothing but the impossibility of getting a passage would prevent his return to England. He left India on 3 December, 1780, nine months after the trial; and after his return to London, busied himself in raising charges against Impey.

The Touchet Petition, 26 February, 1779

In trying to establish the 'rule of law' and in treating the rulers and the ruled equally in the eyes of the law, Impey and his brethren were opposed by both the Company's servants and the British business community in India. The latter, though not in the service of the Company, had, until the advent of the Supreme Court, exercised considerable powers and privileges as members of the ruling class. When some of them were found, by the judges, guilty of oppression against Indians, they turned into avowed enemies of the Supreme Court. They spurred the members of their community, made a common cause with the official class and led the opposition against the Supreme Court. The result was the Touchet Petition.

The immediate cause of the Petition was *the Creasy's Case*, tried by the Supreme Court in the summer of 1778.[1] James Creasy was the superintendent of the public works carried on by Lieutenant-Colonel Watson, an army engineer; the former was 'dependant and creature' of the latter. Two actions of assault, battery and imprisonment were brought against James Creasy by two Indians. Instead of pleading in the usual form, the defendant pleaded 'not-guilty' and desired to be tried by jurymen. The Court declined his demand, for, the Charter did not provide for trial of Englishmen by jury in civil cases. As the case was not defended by the defendant the Court after careful inquiry into the case, awarded Rs. 200 as damages to each plaintiff.[2] From the evidence given in the case it appeared that both the plaintiffs were carpenters, that the defendant had kept both of them in confinement for a night, had ordered his

[1] I.P., Vol. 16259, 153-81. Impey to Weymouth, 26 March, 1779. In this letter Impey gives a short description of the case, the persons involved, the judgement of the Court and its consequences.

[2] It appears on the record that the advocates of the Supreme Court refused to defend Creasy. On being asked by the Committee of the House as to why they refused to defend, William Hickey, who had practised for eighteen months as attorney of the Supreme Court and was in Calcutta at the time of the above

servants to beat them and had himself beaten them with a cane, 'and this under pretence of obliging them to pay ten rupees which another person claimed; but in truth for the purpose of compelling them to desert the service of Mr. Lyons, an architect, with whom they were engaged, and to enter into that of Lieutenant-Colonel Watson.'[1]

The day after judgements were given, hand-bills, signed by Creasy, were pasted against the Court House and in most public places in the town. He thanked those who had privately supported him against the power claimed by the Court over his person and property and went on to solicit more contributions. Thereupon, a committee was formed by the ballot; the avowed purpose of the committee being to procure trial by jury in civil cases; 'and though great pains have been taken to conceal from us the particular subject which they agitate, yet we are sufficiently informed that their deliberations are not confined to this pretended grievance, but that they are, by all means in their power attempting to effect the destruction of the Court.'[2]

The demand of the committee being put forth before the judges, they returned their answer to the effect that the Court was not authorised to try civil cases by jury. The Committee then drafted a petition, the contents of which were kept secret from the judges, dispatched the same home to be put before the Commons assembled in Parliament.[3]

The petition, signed by six hundred and forty-seven Englishmen residing in the provinces of Bihar, Bengal and Orissa, and dated 26 February, 1779, was placed before the House on 1 February, 1781, together with another Petition of Warren Hastings, Philip Francis and Edward Wheeler against the Supreme Court.[4]

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trial, deposed: 'Two of them refused generally, without assigning any reason; a third because he should not succeed; and a fourth because he would not fly in the face of the Court.' (*Touchet Committee Report*, 56.)

[1] I.P., Vol. 16259, 155.

[2] *Ibid.*, 156. The committee consisted of thirteen members.

[3] The committee of thirteen had appointed John Touchet and John Irving, both of Middle Temple, as their agents to solicit the petition, and the Petition was sent to these two gentlemen in London. The Petition took the name of one of the agents and is since then popularly known as the Touchet Petition.

[4] Parl. Debates, Vol. XXI, (1781) Cols. 1161-1207. The Touchet Petition was presented to the House on 24 January, 1781, was read on 1 February, 1781, and debated on 12 February, 1781. (*Annual Register*, 1781, 303, f.n.) The Petition

The Petitioners asked the House for the following:[1]

(1) to grant a trial by jury in all cases where it is by law established in England;
(2) to limit the retrospective powers of the Court to the time of its establishment in Bengal;
(3) to define beyond the power of discretional distinction the persons who are and who are not amenable to the jurisdiction of the Court;
(4) to declare what statutes shall not be in force in Bengal, and what statutes shall be in force;
(5) to direct and circumscribe the power of the Court in the admission and rejection of evidence so that all rejected evidence may accompany the appeal by way of affidavit or otherwise;
(6) to appoint distinct and separate judges for the law and equity sides of the Court;
(7) to restore the ancient and constitutional power of hearing appeals in the first instance to the Supreme authority in this government formerly vested in the President and Council;
(8) to lodge a power of staying execution in criminal cases till His Majesty's pleasure be known in the Governor-General and Council.

On the above facts relating to the Petition we may offer certain comments.

On the real causes of the agitation

From the contents of the petition it is obvious that the Petitioners wanted a large curtailment of the powers of the Supreme Court. The reasons why they were opposed to the Supreme Court is apparent. The Supreme Court had deprived them of the exercise of unlimited powers and privileges and punished them for oppressions and corruptions. Their ego and pride were sufficiently hurt by the equalising principle which the Supreme Court had established between them

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of the Supreme Council of Bengal related to the Kasijora Case and was sent home months after the Touchet Petition; but it was taken into consideration by the House with the latter.

[1] H.M.S., Vol. 144, Touchet Petition, 327-35.

and the Indians. Impey in his letter to Kerby, dated 26 March, 1779, thus wrote: 'You cannot imagine that the Gentlemen here either of the Council or in inferior Stations could with pleasure see the powers of the Court exercised with any effect; the first because before the arrival of the judges no other English power was known in India, but that of the Council; the others because they cut up many illicit sources of wealth, and make them liable to punishment for open violence and oppressions.'[1]

The above statement of Impey needs some explanation. Among the agitators were few members of the provincial Councils and Board of Commerce.[2] That the members of the provincial councils nourished grudges against the Supreme Court hardly needs any explanation. On the conduct and character of the members of the Board of Commerce, Impey, in his letter to Weymouth, commented in the following words:

'The corruption of the members of the Board of Commerce is a matter of public conversation and it is without doubt that the most gross frauds in relation to the sales and contracts which the Company have entrusted to them were formed into a regular system very early after their institution and have been uniformly practised ever since. We are convinced that a bill of discovery with proper interrogation pointed to this charge and brought against the members of that Board and their "black agents" would furnish matters to prove that they had great reason to wish for the non-existence of the Court.'[3] Impey's general strictures on the conduct and character of the members of the Board are to some extent testified by certain facts which he referred in the same letter. He referred to *the Case of Henry Cottrell*, who was a member of the Board and keeper of the warehouse. An action had been brought against him by one Jugmohan Shah, an opulent Hindu merchant who having bought coppers from the Company's sale and finding them to be short of

[1] I.P., Vol. 16259, 182.

[2] In the rough draft of his letter to Weymouth, Impey mentions the names of a few signatories to the petition and also the posts they held. In the final draft of the same letter he omits to mention the posts the various signatories held. However, from the rough draft can be gathered the nature of positions a few persons who had signed the petition held at that time. Philip Milner Dacres was President of the Board of Commerce; Petrie was the collector of Government Customs; and Shore, Evelyn and Henry Vansittart were members of the Calcutta Committee of Revenue.

[3] I.P., Vol. 12659, 165.

weight appealed to Cottrell to have them re-weighed. At this, Cottrell was so much incensed that he beat him with a cane and turned him out of the warehouse. The case was tried by the Supreme Court in November, 1778, and damages amounting to one thousand Sicca Rupees were awarded to the plaintiff.

Among the six hundred and forty-seven signatories to the Petition were many army officers. Why and how the army officers signed the petition needs explanation. It appears on the record that an army officer of Lieutenant-Colonel Watson's rank and influence had been successfully sued in the Supreme Court. An ejectment had been brought against him for part of the land on which he proposed to build docks. That land had been forcibly taken by the government without any compensation to the plaintiff. The Court gave judgement in favour of the plaintiff. We have seen above that Creasy was Colonel Watson's assistant. The pride and purse of both having suffered at the hands of the judges they turned into personal enemies of the Court. 'So little conversant are the English here with justice that every cause decided against a British subject creates a personal enemy to the judge'—so wrote Impey to Weymouth.[1]

Thus, the denial of a trial by jury in Creasy's case was the occasion and not the real cause of the agitation which started against the Court in the summer of 1778.

How the signatures were procured for the Petition

Impey in his letter to Dunning wrote that most unworthy means were undertaken to procure signatures to the Petition.[2] The original petition was drafted in the most moderate terms. On the contents of the original petition signatures were procured. After that had been done, additions were made in the margin.

In his letter to Weymouth, Impey mentions that the three high officials of the Army, Colonel Ironside, Lieutenant-Colonel Watson and Colonel Pearse, had by means of personal influence and persuasion secured signatures of many officers and soldiers who served under their command.[3] That army officers should combine to procure redresses of grievances was an alarming situation. That

[1] *Ibid.*, 173. [2] *Ibid.*, Impey to Dunning, 15 April, 1779, 241-43.

[3] Colonel Ironside was the Commander of the Brigade, Lieutenant-Colonel Watson was in command of Engineers and Colonel Pearse of the Artillery. Pearse as reported by Impey read out the Petition to his men and asked them to subscribe.

Impey was alarmed at such a situation is evident from what he wrote to Weymouth and Thurlow:

'But we profess ourselves in some measure alarmed at the conduct of the military. In the firmest and most settled state of our Constitution in England, combinations of the army to procure redress of grievances have ever been objects of great jealousy and in this country where everything has been acquired by and cannot be maintained without the sword, where the hands of the civil magistrates are weak and distant...where many of the officers have no connections in England, do not entertain hopes nor desires of visit in their native land, any attempt to alter or interfere with the established laws by the army is of a much more dangerous tendency.'[1]

Impey knew well that in the event of an open hostility between the Court and the Council the army would serve the Council. It was the army of the Company and not of the King which was stationed in India. In order to establish the authority of His Majesty in the settlements and to protect the Court against the wanton attack of the Council, 'A King's regiment', as Impey conceived in his letter to Thurlow, 'perpetually stationed here, would I am convinced be very conducive to the maintenance of His Majesty's authority.'[2] Impey's suggestion needs no serious consideration. If ever a King's army were stationed in Bengal, its command had to be given to the Supreme Council and not to the Supreme Court, for, it was utterly inconceivable that the Home government would empower the judges to use military force in the event of an opposition to their judicial process. Thus a King's army was no remedy for the quarrels between the Court and the Council. All the same, Impey's apprehensions on which his suggestion was based were reasonable and true, as we shall see in the next chapter. About nine months after he wrote his letters to Weymouth and Thurlow, the Council employed the army to resist with violence the process of the Supreme Court.

Great pains were probably taken by the agitators to prevail on the Indian inhabitants to sign a petition against the Court.[3] However, no such petition seems to have been procured. Furthermore, the agitators seem to have planned to address the Governor-General and Council requiring them (as hostilities had been committed in India against the French) to proclaim that the settlement was now

[1] I.P., Vol. 16259, 176. [2] *Ibid.*, 194. [3] *Ibid.*, 174-75.

under military law.[1] It was by the exertion of Barwell that this move was checked. Impey wrote to Dunning that he had been approached by certain Hindus to dictate a counter petition to the Parliament but he refused.[2]

Impey's version of how signatures were procured may not be true in details. But this much is certain, that signatures were procured by personal influence and persuasion. Even then, the Petition was signed by only six hundred and forty-seven of the total five thousand British subjects who were residing at that time in the provinces.

On the demands of the petitioners

The first and the foremost demand was for the trial by jury in civil cases where Englishmen were concerned. The petitioners claimed 'that the trial by jury in all cases where it can be granted is one of these inherent unalienable and indefeasible rights of which neither time nor circumstances can deprive a British subject'.[3]

However inherent or fundamental that right might have been, it was not granted by the Charter. Under the Charter only criminal cases were to be tried by jury. To extend to India the system of trial by jury in civil cases lay in the powers of Parliament and not in the judges of the Supreme Court. Could Parliament introduce this system in India in the seventeen seventies?

Impey did not think that this demand was either desirable or practicable. The grounds on which he seems to have based his contention were mainly four.[4]

First, the Court would not get sufficient jurors to try civil cases throughout the year. Among the very limited population of the British subjects in the provinces, many had, in the past, declined to serve as jury in criminal cases.[5] If the jury system were introduced in civil cases all the Company's servants had to serve for three-fourths of a year as jurors.

Second, the integrity of the British subjects was doubtful. In his letter to Kerby he wrote that British subjects would not constitute

[1] *Ibid.* [2] *Ibid.*, 241-43. [3] H.M.S., 327.

[4] I.P., Vol. 16259, 153-81. Impey to Weymouth, 26 March, 1779.

[5] Members of the Board of Commerce had petitioned the Supreme Court in 1775 to be exempted from serving on the jury. The Council had petitioned the Supreme Court to exempt certain officials from serving on the jury. Even James Creasy had once declined to serve as juror in a criminal case. (*Touchet Committee Report*, 1781, 57.)

impartial jurors. 'I have heard it was not impolitic to set a thief to catch a thief, but it has never yet been proposed at the Old Bailey to try a Highwayman by a jury of Highwaymen.'[1] All oppressions in India were committed by the servants of the Company and their agents.

Third, if this system was to be introduced in India, it should apply to both Indians and the British. Why not trial by jury in all civil cases, whether the parties were English or Indians? On what principle this privilege could be extended to the British and denied to the Indians?

Fourth, the climate being hot, hours of work being long, it would not be feasible to keep watch on jurors till the day of judgement, as had been the practice.

The above four points seem quite formidable against the institution of trial by jury in civil cases. We may quote here the opinion of George Rous on this point. He was at this time counsel to the East India Company and his opinion was sought by the directors on the Touchet Petition. He reported:

'In Bengal, the conquering nation are few in number; and the terror of a power that must be maintained by the sword, gives to the individuals of that nation a personal superiority, which extends far beyond the exercise of public authority. This had been the source of much private injustice, while the timid native was unable to distinguish between the act of a private oppressor and the act of the government; or if he could distinguish, had no means to redress. This was one of the great evils which the Supreme Court justice was intended to remove.... Admit the trial by jury in civil cases, and the oppressors themselves will decide the degree of compensation to be given for their own wrongs.'[2]

The seventh and eighth demands of the petitioner, that appeals from the judgement of the Supreme Court should in the first instance lie in the Governor-General and Council and that the latter should be vested with the power of staying execution of sentences until His Majesty's pleasures were known, were calculated to establish the supremacy of the Council over the Court.

In his letter to Thurlow, referring to the above demands, Impey reasonably observed that they were 'merely for the purpose of diminishing the respect paid to the Court on account of its independence, by teaching the natives that it is subordinate to the Governor-

[1] I.P., Vol. 16259, 187. [2] *Touchet Committee Report*, Gen. App. 39, 208-10.

General and Council.' If this were done Impey argued, 'the natives would no longer look up to us for justice, for they would consider all powers again centered in the Council.'[1]

On the seventh demand that an appeal should lie from the Supreme Court to the Governor-General and Council, George Rous remarked —'should this measure be adopted, it were better at once to abolish the Court; for the Court subsists for no good purpose, when its decrees were thus rendered wholly dependent on the executive power.'[2]

The real grievance of the petitioners was against the independent exercise of judicial powers by the Supreme Court. 'Did we in our conscience believe, that their application to parliament proceeded from a just sense of real grievance, that it was prosecuted with upright intentions,' Impey observed in his letter to Weymouth, '...we should most willingly have concurred with the petitioners in promoting the success of this measure.'[3]

The debate on the Petition

The Petition was placed before the House at a time when the quarrels between the Court and the Council had reached a climax, and the Indian affairs had aroused concern in the hitherto otherwise occupied minds of the legislators. During the period intervening between the dispatch of the Petition from India to England and its presentation to the House, the Council had resisted by military force the process of the Supreme Court in the case of the Raja of Kasijora and had petitioned the House against the jurisdiction of the Supreme Court, and prayed for an Act of indemnity. The Petition of the Governor-General and Council together with the Touchet Petition was placed before the House on 1 February, 1781 and debated on 12 February. Thus, the events of the intervening period added some weight to the Touchet Petition.

General Smith moved the House to appoint a Select Committee to inquire into the Petitions against the Supreme Court.[4] Boughton Rous, who had served the Company in India for some time and now was a member of the Parliament, reminded the House of the experience dearly bought in America and warned the members

[1] I.P., Vol. 16259, 234.
[2] *Touchet Committee Report*, 1781, 210.
[3] I.P., Vol. 16259, 153-181.
[4] Parl. Debates, Vol. XXI, 1781, Cols. 1182-91.

'not to be neglectful of the petitions and remonstrances of our fellow subjects, situated in distant parts of our widely extended dominions.'[1]

The American tragedy being fresh in the memory of the House, it seemed inclined to give ready attention to the Indian crisis.

We may here pause to examine whether certain remarks made by Rous in his speech to the House were well-founded. His tirades against the introduction of English law in India through the instrumentality of the Supreme Court, were mainly based on the allegation that it had violated the customs and religious practices of the Indians.

'I presume we want to enjoy their trade; we want to maintain possession of their country; we want to remain master of its revenue; we want the fidelity and affection of their people to supply our armies with recruits and strengthen us against the efforts of our rival powers in Europe. All these you will have, Sir, if we only allow them to go on in the track of their forefathers, with a free and undiminished preservation of all their ancient practices and distinctions.'[2]

The above statement of Rous suffers from calculated misrepresentations of facts. The customs, laws and religious practices of the Indians had never been violated by the Supreme Court. The first point to be made in this connection is that the Supreme Court did never exercise universal criminal and civil jurisdictions over the Indians. Its territorial jurisdiction was confined to the limits of the town of Calcutta. Outside Calcutta, its jurisdiction was personal and extended only to those who were in the service of the Company. Secondly, in civil cases where both the parties were Hindus or Muslims, the Supreme Court administered either Hindu or Muslim law, as the case might be, and not the property laws of England. In order to explain and expound Hindu and Muslim laws the Court had appointed learned pundits and maulavies who attended the Court when any custom, practice, religious scruple or law of the Indian was at issue. There is not a single instance to show that the Supreme Court ever deviated from this rule of procedure. Most of the complaints and suits were filed by the Indians against the excesses committed by the Company's servants in wanton and unregulated exercise of civil, criminal and revenue powers over their life and property. It was not the Indians but the British subjects and their agents who suffered from the institution of the Supreme Court in India. It was not expected that 'men who acknowledged no law

[1] *Ibid.*, Col. 1192 [2] *Ibid.*, Col. 1201.

but their own will patiently submit to new control, while they thought they had any means of getting rid of it.'[1]

Regarding what Britain wanted from India, perhaps the judges of the Supreme Court held no different opinion than what Rous declaimed in his speech. But the judges wanted to give in return justice and law.

Commenting on the equalizing principle which the Court tended to establish between Indians and Europeans, Rous argued that the British power in India was more imaginary than real, that the Indians had been in the past led to look up to an Englishman with awe and acknowledge superiority, hence, 'if they see our government degraded in the public eye, and every Englishman of rank reduced to a level with the lowest native,' they would soon find out that the English were but men like themselves, or very little near.[2] The consequences, as Boughton Rous predicted, would be a fall in the dignity and power of the British and any accident might produce a revolt which would be ruinous for the British empire in India.

In brief, Rous wanted to let the House know that in case the powers and jurisdictions of the Supreme Court were not curtailed there would be another revolt, this time in India, and Britain would lose India in the way she had lost America.

The House appointed a committee of fifteen (popularly known as the Touchet Committee) to inquire into the petitions against the Supreme Court. On the report of the Touchet Committee, the House passed the Act of 1781, which to some extent, as we shall observe later, curtailed the powers of the Supreme Court. But the specific demands of the petitioners were not granted. Impey's stand on the jury system seems to be significant for, it is one of the few practices of Common Law which failed to take root in the country owing to the difference between English and Indian systems.[3] Realising this fact, the Law Commission of India, appointed in 1955, recommended its abolition.

[1] I.P., Vol. 16259, 169-70.
[2] Parl. Debates, Vol. XXI, (1781), Col. 1203.
[3] Setalvad, *The Common law in India*, 37.

CHAPTER VII

THE CRISIS: THE KASIJORA CASE 1779-80

The year 1779 was crucial in the history of the British Empire. In the west, France, Spain and Holland had joined the revolted American colonies against England. Inside India, the Muslim rulers of Hyderabad and Mysore had confederated with the Hindu Marathas against the British power.

Hastings, though no longer in a minority in Council, needed the full support of his councillors in his foreign policy.[1] Above all he required money to finance the wars. Land revenue was the principal source of income. It must, therefore, be at all costs collected. To this political urgency everything must submit, even if need be, the judges and their scale of justice.

It therefore became a year of trial for the judges of the Supreme Court. British justice in India seemed to be at cross purposes with British power. In their attempts to establish the rule of law the judges had been criticized and opposed by their own countrymen. The Indians, whose life and property they intended to safeguard, were powerless to vindicate their support for the Court. Also, being unfamiliar with any such tradition in their land it was too early for them to understand and appreciate the implications of an independent judiciary. The Supreme Court and its judges now seemed to have nothing but enemies. Were they to submit to the British power or to uphold British justice?

They chose the latter course, as is made clear by the Kasijora case. The government, now with an added excuse of political urgency, resisted the Court with the force of arms. This led to a constitutional crisis, no less significant than the general political crisis of the time. From this crisis the Court emerged enfeebled and subdued.

The Background of the Case

Raja Sundernarain was the Zamindar of Kasijora, situated in the district of Midnapur, Orissa. The company realised from him an

[1] The other Councillors were Barwell, Francis, and Edward Wheeler. The last, a former Chairman of the Direction, had joined the Council on 11 December, 1777.

annual revenue of one hundred and eight thousand sicca rupees (£20,000). His surety was one Kashinath, a principal merchant of Calcutta and a man of considerable rank.

In the early days of Company's rule every Zamindar or farmer of land revenue had to find a surety. If the Zamindar defaulted, the surety had to pay the revenue to the company. The Company thus was doubly secured. But the surety, before the inception of the Supreme Court, had practically no remedy against the Zamindar, in case the latter did not pay him back. The surety could file a suit in the Company's *Diwani Adalat*, but these Adalats were corrupt, inefficient and definitely partial to the revenue collectors. In fact it had become the established policy of the government to discourage debt-suits against the Zamindars.

It appears that the Raja of Kasijora was indebted to Kashinath in a large sum of Rs. 183405-13-8 upon two bonds which the former had executed at Calcutta in favour of the latter. It further appears that Kashinath had been paying the revenue on account of the Zamindary of Kasijora and on one occasion he had been put into confinement for some time for the realisation of the arrears.

On 13 August, 1779 Kashinath filed a debt suit in the Supreme Court against the Raja of Kasijora. Not only the cause of action—the execution of the bonds—had occurred at Calcutta, which was within the jurisdiction of the Supreme Court, but the defendant, it was shown, being a Zamindar was indirectly in the service of the Company and as such was under the jurisdiction of the Court. Therefore Hyde issued a capias against the Raja, authorising the sheriff to accept bail in the sum of Rs. 300,000 (£35,000)[1]

At this stage the Governor-General and Council sought the advice of Sir John Day, the advocate-general. He advised against Raja's appearing in the Supreme Court and doing any act which might amount on his part to a recognition of the authority of the Supreme Court. He further advised that 'in all similar cases, as well as in the present, the power of the government shall not, if called upon, be employed in aid of the judicature, but that they be left to their own means of executing their process'.[2]

In consequence of Day's advice the Governor-General and council directed John Peiarce, the collector of Midnapur, to refuse any

[1] A writ of capias empowered the sheriff to arrest the person named therein. Capias has now become obsolete, superseded by writs of attachment.

[2] *Touchet Committee Report*, 1781, Kasijora App. 5, 334.

assistance the sheriff's men might require in serving the writ on the Raja.

Since the Raja was hiding the writ was returned to the Court unserved. Thereupon Hyde issued on 12 November, 1729, a writ of sequestration to seize the effects of the Raja's house in order to compel his appearance in the Supreme Court.

The sheriff's men started for Kasijora on 16 November. The Governor-General and council directed Lieutenant Colonel Ahmuty, commander of the cantonment near Midnapur, to detach a sufficient force to intercept and arrest sheriff's men.[1] Accordingly Ahmuty dispatched Lieutenant Bamford with two companies of Sepoys to arrest sheriff's men. With the co-operation of William Swainston, assistant collector of Midnapur, Bamford arrested sheriff's men on 3 December, 1779, kept them in confinement for three days and then sent them to Calcutta as prisoners.[2]

John Day approved the conduct of the council and assured them that the violent resistance offered to the Court was unavoidable and necessary.[3] The council released the sheriff's men, at the same time directing Ahmuty to resist any further writ of the Court meant to be served on him or Bamford. On 18th January, 1780, Brix, the Counsel for the plaintiff, moved the Court for a writ of attachment against William Swainston, Lieutenant Bamford, Hastings, Barwell and North Naylor. The first two, it was alleged, had committed high contempt of Court by imprisoning sheriff's men. Barwell and Naylor, it was alleged had persuaded the defendant to evade the process of the Court. It was shown to the Court that shortly after Kashinath had instituted the suit against the Raja, the latter had authorised his agent to defend it. But Naylor and Barwell persuaded him not to defend and subsequently the Raja left the suit undefended.[4] Hastings, on the other hand, had expressed his resentment at Kashinath's suit and asked him to withdraw it.

The Court issued writs against all except Barwell and Hastings. 'As to the Governor-General and Mr. Barwell', said Impey 'we will not include them in the Rule, because we will not grant a Rule we cannot enforce'.[5] All the same Hastings and Barwell were served with the copies of the writs so that they might answer if they pleased.

The Court's summons could not be served on Swainston and Bamford because Ahmuty, acting on the orders of the Council,

[1] *Ibid.*, App. 6, 334-35. [2] *Ibid.*, App. 8, 336-37. [3] *Ibid.*
[4] *Ibid.*, App. 19, 347. [5] *Ibid.*, App. 19, 347.

did not allow the sheriff's men to enter the barracks at Midnapur. But Naylor, being an attorney in the Court could not evade the Court's summons. On his appearance he was charged with contempt of Court. It was shown that he had obtained information from the sheriff's office regarding the forces sent to Kasijora and passed on this to the Council. On receiving that intelligence the Council had dispatched a force large enough to outnumber the sheriff's men. He had further advised Raja Sundernarain, the defendant, not to defend the case and to abstain from appearing in the Court.

In his letter to the Council, dated 22 February, 1780, Naylor dwelt upon what he called the real cause of his harassment at the hands of the judges. It was 'a deliberate and concerted measure to degrade the legality of the government, by the punishment of your public officer, and to impress the minds of the natives with an idea of criminality in your proceedings, under the authority of which he has acted'.[1]

The contempt of Court charge was tried on 3 March, 1780. To the first charge he pleaded that it was not criminal to communicate with the Governor-General and Council intelligence so important as that a body of men had been marched to the interior part of the province. As to the second charge he argued that there are occasions in which an attorney might be justified in advising his client, either to avoid the process of the Court, or not to appear at it.[2]

On the second plea Impey commented that it was not within the power of the Governor-General and Council or their attorney to advise anybody on the question whether he was or was not subject to the jurisdiction of the Court, especially when the Court had issued a process against that person.[3] Chambers and Hyde agreed with Impey. Naylor was committed to prison, no bail was accepted because the punishment was in the words of Impey, 'exemplary'.

In the meantime, Kashinath had filed another plaint, this time against the members of the Council (Hastings, Barwell, Francis and Wheeler), for having assaulted the sheriff's men and rescued the effects seized, with a motive to deprive the plaintiff of the recovery of his debts from the Raja of Kasijora. The members of the Council were severally served with summons to answer to the charges. As the Council was no corporation, the Councillors could be sued only as individuals.

[1] Criminal and Judicial Consults., 1780, No. 50 Vol. 22, 437-49.
[2] *Ibid.*, 350. [3] *Touchet Committee Report*, 1781 App. 23, 356-59.

The Councillors first put their appearance through their Counsel and pleaded that the acts as complained were done by them in their public capacity. Then they subsequently decided to withdraw their appearance and asked their counsel to convey to the judges their following declaration:

(1) That the government of Bengal was at war with a most powerful Indian state;
(2) That the Home government being at war with their American colony could afford no protection to the Indian government;
(3) That, in order to finance the war, the Bengal government depended solely upon the revenue of the provinces which shall suffer if the Zamindars were subjected to the jurisdiction of the Supreme Court;
(4) That, in the event of heavy losses to the revenue, the government, would fail to disburse the salary of the Sepoys who might revolt against the government;
(5) That if the Councillors were held answerable to the Supreme Court on the suit of an Indian, the respect for the government in the mind of the Indians would decrease and the administration weakened.[1]

This declaration was read out in the Court on 11 March, 1780, by the junior counsel of the Company; the senior counsel, Newman, having disapproved of the proceedings of the Council in the Kasijora case had declined to act as their advocate in any part of the proceedings.

The judges refused to allow the withdrawal, declaring that it was not in their power to allow it without manifest injustice to the plaintiff.

On Council's suggestion that the matter might be referred to the Parliament, Impey, in his letter to Weymouth, commented: 'That we knew of no individual mode (nor had we any other means) of bringing any question before the Parliament, to take the sense of the legislature upon it'.[2] Referring to the Council's declaration that the Councillors were not subject to the jurisdiction of the court, he contended; "That if they thought themselves not amenable to the court, they ought to plead to the jurisdiction, or demur to the plaint; and if they were discontented with our judgments, the charter had given them a remedy by appeal".[3]

[1] *Ibid.*, 366-67. [2] *Ibid.*, Impey to Weymouth, 12 March, 1780, 368. [3] *Ibid.*

A serious deadlock was created. The Supreme Court, which had by now been sufficiently humiliated by the Council, would not compromise with the situation to which it had been reduced. It would not allow the Councillors to withdraw their appearance, but it had no force or power to compel their appearance. The Councillors, on the other hand, were obstinately adhering to the principles on which they had violently resisted the process of the court. They would not put their appearance and would defy all the orders and summons issued by the court. A compromise seemed impossible.

It was at this critical juncture on 12 March, 1780, that Kashinath, the plaintiff, all of a sudden withdrew his suit against the Raja of Kasijora and the Governor-General and the Council.[1]

OBSERVATIONS ON THE KASIJORA CASE

Two questions were mainly involved in the Kasijora Case. Firstly, whether the Zamindars were subject to the jurisdiction of the Supreme Court? Secondly, who was the competent authority to determine the above question, the Court or the Council?

The first question involved an inquiry into the status of the Zamindars. Were the Zamindars hereditary officers of the Company or absolute owners of their lands? What difference, if any, existed between a Zamindar, a farmer of revenue, and a collector of revenue? If their status was the same as that of the Company's servants, then they were certainly subject to the jurisdiction of the Supreme Court—on the other hand, if they were shown to be absolute owner of their property, they were outside the jurisdiction of the Supreme Court, for, the Charter had empowered the Court to exercise jurisdiction over such Indians who were employed directly or indirectly in the service of the Company.

If the Council really believed that the Zamindars were not subject to the Court's jurisdiction, why had it in the past as in the present case deliberately prevented a judicial determination of the issue? Indeed, the very appearance of a Zamindar in the Supreme Court, even if the appearance was made to plead that he was not subject to its jurisdiction, might have mortified a power conscious council as an admission of a superior power in the Court. But this does not explain why Hastings, an old friend of Impey and his court, would rather use force against the Court than allow a Zamindar to appear in

[1] Vol. 16259,—Impey to Sutton, 12 March, 1780, 431-41.

it. There was something more serious at stake than the prestige, power or personal prejudices of the Councillors.

For an ampler explanation we have to refer to an earlier case, *The Case of Futty Singh.* In this case one Jagmohan had obtained a decree from the Supreme Court against Zamindar Futty Singh for the recovery of his debts. In execution of the decree the zamindari of Futty Singh was put on sale by the sheriff. On the advice of their law Commissioner, George Bogle, the Governor-General and the Council applied to the sheriff to abstain from executing the decree of the Court against the judgment-debtor. In return they promised to defend the sheriff in case a suit was brought against him by the plaintiff. This overture to the sheriff was designed to prevent an inquiry into the status of the Zamindar by the Supreme Court. If the zamindari was sold, the new purchaser would immediately endeavour to obtain possession, and if opposed, he would no doubt procure warrants and bring suits against those who opposed him. In such a suit the rights and status of a Zamindar were bound to be examined by the Court. On the other hand, if the zamindari was not sold, the plaintiff would be reduced to the necessity of bringing a suit against the sheriff. Such a suit would not involve the determination of the legal status of a Zamindar.

These alternate courses were presented to the Council by George Bogle, who further advised them to avoid the status of the Zamindars being ever determined by the Supreme Court: 'But a judicial inquiry into their rights and tenures, whenever it shall happen, is likely to have important consequences on the government of this country. Should it be determined, that a Zamindar is a hereditary officer, who collects the revenue in trust for government, whose *Jumma* is fixed only to prevent embezzlement, and who is liable to be removed at will, it will be argued, and on plausible grounds, that every Zamindar is a servant of the Company, an officer of government, and therefore subject to the jurisdiction of the Court. Should it, on the other hand be decided, that a Zamindar is an absolute proprietor of his zamindary, in every instance where he is dispossessed, he may reclaim his right thus established by a process in the Supreme Court against the Company, contest the grounds on which he is excluded from possession, or on which his land is assessed; in short, in whatever way the question may be decided, it is likely to open a wide field for litigation.[1]

[1] *Touchet Committee Report*, 1781 Gen. App. 12, 144.

George Bogle's analysis of the question and his advice were readily accepted by the Council. In future the Council was to evade any judicial inquiry into the rights and status of the Zamindars. This policy, therefore, was devoid of any principle to protect and safeguard the interests of the Zamindars. On the contrary, it was calculated to keep them in ignorance about their rights and status. The commercial interests of the Company required that their status remain undefined. There are evidences to show that Zamindars were frequently confined, dispossessed and harassed for arrears of the revenue.[1] Even hereditary Rajas and Ranies could sometimes be harassed and humiliated. The Rani of Burdwan, for example, was in 1777, interned in her house and subjected to insults and humiliation for the arrears of revenue. A certain Bahadur Singh of low rank was introduced in her household to manage all her affairs against her will and she was deprived of all her civil rights. At last when she complained to Le Maistre, he gave her the proper relief and declared: 'Every disturbance of the peaceable enjoyment of a person's own house, is an enormous oppression; and while I stay in this country, I will to the utmost of my power, give the same redress, and the same measure of justice to the lowest of the people, which I hope to see given to the Rani upon this occasion, be the oppressor ever so great or powerful.[2] The oppressions against the Rani were commenced at the order of the Council. This order was carried with the consent of Barwell and Hastings and was opposed by Clavering and Francis. It may be recalled that it was the Rani of Burdwan who had accused Hastings in 1775.

It is true that these Zamindars had contracted loans in enormous sums. If they were compelled to pay off their debts with interest they would become penniless and as a result of this the Company's revenue would suffer tremendously.[3] On the other hand the private creditor had no remedy against them. He had to trust to the Rajah's honour, knowing very well that there was no authority which could enforce payment.[4] The councillors argued that when these debts were contracted by the Zamindars, the creditors had no certain means of recovering them, for there was then no justice. It would, therefore, be extremely unfair to render certain, by means of the

[1] *Ibid.*, Apps. 23, 26, 30-31, 165-68.
[2] *Ibid.*, Le maistre to Higginson; 23 June, 1777, App. 17; 154.
[3] *Ibid.*, George Vansittart on the condition of the Zamindars. 29-30.
[4] *Ibid.*

Court, that recovery which both parties intended should be contingent. Impey's rejoinder to this was that 'if the contingency had now turned out in favour of the lender by the patronage of His Majesty, it was but fair he should avail himself of it'. Justice demanded that at least the principal should be paid. As for the interest the Court had power to mitigate 'unconscionable interest'. He held that 'there cannot be a more fruitful source of corruption, or stronger engine of arbitrary power, than a discretionary right to permit or prohibit the recovery of just debts, and to subject to, or protect, the most opulent and most powerful natives from punishment'.[1]

Thus the groundwork of the Council's policy towards the Zamindars was laid in the Case of Futty Singh.

In the Kasijora Case the Council followed its one-year old policy and was successful in preventing a judicial enquiry into the status of the Zamindars. Immediately after the institution of the suit against him by Kashinath, Raja Sundernarain, the defendant, had granted the power of attorney to Wroughton and the latter was to defend him in the Case. This warrant was filed in the Court by the plaintiff to show that in the beginning the defendant had every intention of putting up appearance through his attorney and of defending the Case but later he was coerced by Barwell and Naylor to withdraw the power granted to his attorney and abstain from defending the suit.[2] The defendant withdrew his power of attorney at the instance of the councillors and their attorney and the latter in return assured him of their protection and patronage. Having thus committed themselves to the protection of the Raja, the Councillors could not withdraw their protection without damaging their prestige and power.

Turning now to the judges' opinion on the questions raised by the Kasijora Crisis, we notice that they did not get the chance of inquiring into the first question relating to the status of the Zamindars. Impey, as it appears from his private letters, did consider the Zamindars as no more than revenue collectors of the Company. 'Depend upon it my dear Lord', he assured Thurlow 'the opposition offered to the Court in this point as well as in many others does not arise from any zeal for the revenues or any affection for the natives. The protection of Zamindars (who are almost universally collectors of revenue) is a much fruitful source both of power and of wealth,

[1] I.P., Impey to Weymouth, 2 March, 1780, Vol. 16259, 374.

[2] *Ibid.*, Impey to Weymouth, 18 January, 1780, Vol. 16259, 277.

they are most admirable intermediate agents to execute all acts of despotism and the protection from debts or compulsion to pay them is seldom procured without a pecuniary compensation of large sums of money paid on both accounts.'[1] In the same letter Impey further reported that a sum of Rs. 75000 had been paid by the Raja of Kasijora to the collector of Midnapur, in return for the protection given him by the latter.

On the second question as to who was the competent authority to decide whether the Zamindars were subject to the Court's jurisdiction, Impey held that it was the Court and not the Council which could determine the legal status of the Zamindars.

'Natives, under the certain descriptions, it is said by the Act of Parliament and Charter, shall be objects of our jurisdiction. Where is that to be inquired into? Is the Governor-General and Council to make inquiry, to send mandates to the Court for us to stop proceeding, or to go on? This would be greater subjection than ever the Mayor's Court were under, in whose place we are put; and to remedy the inconvenience of which influence we came.'[2]

In his long letter to Thurlow, Impey argued the point further and stated that if the Court was to decide upon the issue of jurisdiction, it had no other means to know whether a person was subject to its jurisdiction except by hearing him plead to the jurisdiction.[3] Referring to the Case of Kasijora, he wrote to Weymouth "that if the defendant was... not an object of the jurisdiction, no prejudice could arise to him by pleading it, for he would have judgement in his favour, and would be no more molested; if against him, he might appeal."[4] This process of ascertaining the Court's jurisdiction in a particular case was no doubt slow and tedious. At least on one occasion it also resulted into hardships to the defendants. A few Zamindars were brought prisoners from the province of Dacca to Calcutta, accused of murder; and after remaining eleven months in the English gaol, were found, upon their trial, not to be objects of the jurisdiction of the Supreme Court, and were discharged.[5] But if an affidavit, that the defendant is an object of the jurisdiction, and specifying in what manner he becomes so, "is not a sufficient barrier against in-

[1] *Ibid.*, Vol. 16259, 310-11.
[2] *Touchet Committee Report*, 1781, Impey in Rex vs. Naylor, 354-55.
[3] I.P., Vol. 16259, 294-320.
[4] *Touchet Committee Report*, 1781, 370.
[5] Parl. Debates,...Vol. XXI. Cols. 1184-85.

jury," Impey argued 'I must plead my inability to contrive a better; and if a better had been suggested by the Governor-General and Council, I should most readily have adopted it.'[1] The Councillors had only one suggestion on this point, that on a question whether any person or class of person was amenable to the Court, their declaration should be taken as authentic and final by the Court.[2] For obvious reasons the Court would not trust the Council and their subordinates.

Thus we find that on the question of the status of the Zamindars the Court and the Council stood at cross purposes. Though the Council had opposed them for the last five years the judges did not expect that it would ever use force, especially since Clavering and Monson had died and Hastings, an old friend of Impey and a supporter of the Court, had been restored to power. That the decisive blow was given to the Court by his friend, Hastings, hurt Impey much more than any anxiety which he felt during all the time that he knew Clavering was endeavouring to destroy the Court.[3]

The next question, which arises, is why the Council which was then dominated by Hastings used force against the Court? There is nothing to suggest that the violent resistance offered to the Court was due to a break in the friendship between Hastings and Impey. They were friends on the eve of the crisis; they remained so during and after the crisis. After the hostilities had been commenced and before January, 1780, Impey and Hastings met several times in private and discussed the situation.[4] Impey tried to persuade Hastings to think that it was not right in Governor-General and Council and the various Zamindars to decide whether the Supreme Court had jurisdiction in a particular case, and Impey assured him that no action shall be commenced against anybody for what had passed if he prevailed upon the defendant to plead to the jurisdiction of the Court. But Hastings did not agree to Impey's proposition, and evaded giving any definite answer. Yet, both remained friends. In his letter to Thurlow, Impey wrote: 'I shall undoubtedly keep my word with Mr. Hastings and even go beyond it with regard to our private friendship, for though I cannot with all my prejudices in favour of him, be induced to think that he is now acting on sentiments of duty, yet I revere him for

[1] *Touchet Committee Report*, 1781, 371.
[2] *Ibid.*, 148.
[3] I.P., Impey to Dunning, 2 March, 1780, Vol. 16259, 322.
[4] *Touchet Committee Report*, 1781, App. 26, 369-74.

many notable qualities, and believe him, when he tells me, he is not left to himself in this business.'[1]

Unmindful of Impey's protestations, Hastings and his trusted friend, Barwell, took an active and leading part in organising the resistance. We have observed above that it were Barwell and Naylor who asked the Raja not to put an appearance in the Court. On 30 November, 1779, Francis wrote the following in his private journal:

"Letter from Naylor our attorney giving notice of a military force having marched under the orders of the Sheriff to Cossijurah to execute a writ of sequestration... *Hastings takes fire and swears this is too atrocious to be borne.* Unanimously resolved to order Ahmuty, who commands at Midnapore, to march a force to Cossijurah, to intercept, seize and detain the rioters. This step seems to be decisive. We shall see in what manner it will be supported."[2]

On 14 March, 1780, Hastings wrote to John Purling:

"I sincerely lament our difference with the judges; but it was unavoidable. I think you will support us; if you do not, be assured Bengal, and of course India, will be lost to the British nation."[3]

What compelled Hastings to use force against the Court? The answer is to be partly found in a short-lived alliance between Hastings and Francis.

After the death of Monson and Clavering, the balance of power in the Council had turned on Hastings' side. With the support of Barwell, he could carry the decisions of the Council. His only enemy left in the Council was Francis.

On the eve of the Kasijora crisis Sir John Day was trying to bring about a reconciliation between Hastings and Francis.[4] Barwell's decision to resign his post and return to England made Hastings aware of the advantage of an accommodation with Francis.[5]

Since the decision of the Court in Grand's case, Francis had turned into the bitterest enemy of Impey and his Court. He was, therefore, willing to compromise his differences with Hastings if

[1] I.P., Impey to Thurlow, 11 January, 1780, Vol. 16259, 313.
[2] F.P.E. 23, 208.
[3] Gleig, *Hastings*, Vol. 2, 292-93.
[4] F.P.E. 23, Journal, 233-34.
[5] *Ibid.*, E. 14, Francis to Smith, 8 March, 1780, 365.

Hastings would agree to present a united front against the Court. The terms were agreed upon and the alliance was nearly complete before the Kasijora crisis.[1]

Hastings' own desire to assert the powers of the Council against the Court, might have been the additional reason for the stand he took against the Court. Being now powerful in the Council, he might have realised that his interests were identical with those of the Council. However, in the beginning he appears to have tried to avoid a head-on clash with the Court by persuading Kashinath in vain to withdraw his plaint.[2]

The immediate cause of the Crisis was the advice of Sir John Day. He first advised the Council to refuse any aid to the execution of Court's orders and afterwards, when the Council, emboldened by his first advice had marched troops against the Court's officers, he justified their action.

Why Day, an English lawyer trained in English legal tradition, collaborated with the executive against the judiciary? We find that his early reports on Patna Case and Gowry Chand's case teemed with candour and a sense of allegiance to the Supreme Court. This sudden change in his attitude towards the Court may to some extent be explained by what passed between him and Impey in the month of July, 1779 on the issue of his admission to the Supreme Court.[3]

Day had been appointed Company's advocate-general and given precedence over junior counsels by a letter patent. He wanted to know from the judges whether he was to undergo the common procedure for admission in the Court or he had only to produce the letter patent. The Court refused to consider the question—whether he had a right to act as an advocate without admission, but agreed to admit him in the Court when he applied. He insisted on his right to appear in the Court without securing any formal admission. The judges, having no notice of any such precedent, were reluctant to concede his demand. In consequence he refused to appear in the Court. He had not put a single appearance in the Court until January, 1780. On such a trifling matter of dignity, he appears to have turned into a personal enemy of the judges.

Thus we find that private interests had a greater part to play in

[1] *Ibid.*, Coote to Francis, 26 May, 1780, 447-453, *also*; E. 17; 585.

[2] H.P. Add. Mss. 29128, Hastings to Barber, 6 January, 1780, 224.

[3] Letter Book of Impey, correspondence between Impey and Day, Vol. 16267, 37-43.

temporarily uniting Francis, Day and Hastings against the Court. Though Barwell supported Hastings he did not think it proper that the government should have committed themselves to the Zamindars by advertising that the latter were not subject to the Court's jurisdiction.[1] Before he left India on 3 March, 1780 for England, he directed his attorney to appear in the Court in the Case of Kashinath against the Councillors even if the other Councillors declined to do so.[2]

The judges, on the other hand, could do nothing to avert the Crisis. Once the Capias was issued and returned unanswered the of sequestration was bound to follow. Impey was ill at the time when Capias was issued by Hyde. But Hyde issued it under the established rules of the Court. It was shown to the satisfaction of Hyde that Raja Sundernarain was indebted to Kashinath, that the bonds were executed in Calcutta and the defendant was employed indirectly in the service of the Company. In the circumstances the Court had no option but to issue the Capias.

During the crisis Impey does not seem to have lost hope in the eventual victory of the Court over the Council. 'I have no authority to command troops' he declared 'but I can put those who do command them, in a situation to answer to His Majesty for the contempt of His Authority.'[3] And realising gradually that the Court could not fulfil its mission in face of a hostile council, he appealed to Thurlow, that the Court should be armed with additional terror:

'If any shadow of a controlling power over the Company and its servants is to remain, and if any justice is to be executed with effect in the country, it is absolutely necessary that the powers of the Court should be extended, that it should be armed with additional terror.'[4] He detailed his requisition by adding that the jurisdiction of the Court should extend to all provinces, that all inferior magistrates should be commissioned by His Majesty and put under the control of the Court, and the Court should be empowered to receive appeals for repeal and revision in all cases where the cause of action increase Rs. 1000.

Consequences of the Kasijora Crisis

The immediate result of the Kasijora crisis was the abridgement

[1] *Touchet Committee Report*, 1781, Barwell's deposition, 26.
[2] *Ibid.*, Impey to Weymouth, 12 March, 1780, 367-68.
[3] *Ibid.*, Impey in Rex vs. Naylor, 355.
[4] I.P., Impey to Thurlow, 18 January, 1780, Vol. 16259, 266.

of the powers of the Court. Its jurisdiction was in effect reduced to the town of Calcutta. Impey wrote to Dunning in March, 1780, that the Court had not yet been able to execute a single attachment out of Calcutta.[1] "This will prove the truth of my assertion, the natives are taught that the powers of the Court had been by the authority of this government restrained to the town of Calcutta."

The notice given by the Council to the Zamindars on 17 December, 1779, that they being not subject to the jurisdiction of the Supreme Court shall not appear, plead or do any such act which might amount on their part to a recognition of the authority of the Court, had, in the words of Impey, created "universal terror" among the suitors of the Court, which could be well imagined by those who were acquainted with the 'extreme sensibility and timidity of the natives'.[2] In the same letter Impey reported that verbal intimations were given to the Indians that the jurisdiction of the Court did not extend beyond Calcutta. He mentioned further, 'I am told from good authority that the Baniyan and other principal servants of Sir John Day are now sent over the country among the provincial Zamindars and collectors to acquaint them how much he is their friend, that he is sent from England to defend them against the Court and to collect contributions from them for his good offices'.[3]

The business of the Court was so much reduced that the attornies of the Court petitioned the Chief justice that no new attornies should be admitted to the Court, for, that would reduce their already meagre income.[4]

To Sutton, Impey wrote: 'It is not probable you will hear more of any exertion of the natives against the power of the government or individuals but the Court will sink quietly into a state of inaction and oblivion.'[5]

The proclamation of the Council had more than the desired effect. The Zamindars would not allow any process of the Court to be executed in their districts, even if the execution was against a recognized Company's servant. This point can be well illustrated by the *case of Budhinath.*[6] Kashinath, the plaintiff in the Kasijora Case,

[1] *Ibid.*, Impey to Dunning, March, 1780, 324-25.

[2] *Ibid.*, Impey to Dunning, 15 June, 1780, 270-71.

[3] *Ibid.*

[4] *Touchet Committee Report*, 1781, Impey to Weymouth, 2 March, 1780, Kasijora App. 26, 371.

[5] I.P., Impey to Sutton, 12 March, 1780, Vol. 16259, 440-41.

[6] *Touchet Committee Report*, 1781, App. 26, 370.

had filed another debt-suit against one Ramkishore Sharma, who was an Amin of the Company, receiving a salary from Harwood, Chief of Dinajpore. A capias was issued, the defendant submitted to the arrest, but was rescued by Budhinath, the Zamindar of the district, who confined the sheriff's officer for one night and released them next morning with a warning never to attempt executing any process of the Supreme Court. He also told the sheriff's men that he was acting on the orders of the Governor-General and Council.

The next result of the Kasijora crisis was a moderate change in the system of administration of justice by the Company's Courts.[1]

The government having resisted by force the process of the Supreme Court, thought it prudent to give some appearance of justice to the provincial judicial system. The old Adalats were abolished and new ones created, over each of which was placed one of the junior servants of the Company, who was to take oath to administer justice impartially and take no bribes.[2] The *Sadar Diwani Adalat*, which had long since ceased functioning was revived.

Reform in the provincial administration of justice was a long felt necessity. The Company's Courts needed organisation, coordination and gradation. They needed efficient and honest judges, independent from the executive control, and a well defined body of law to administer. Though these reforms did not remedy all the defects, they were, all the same, steps in the right direction.

Were these Company's junior servants competent enough to administer civil justice? Probably they were not. They did not know the language of the people nor were they proficient in law. They were young, inexperienced and of strong prejudices. And in the words of Impey some, like Booth, were 'of the meanest natural part', totally illiterate in their own and ignorant of any Eastern language and of the lowest, most extravagant, dissipated young men in the country.[3]

One of the consequences of the crisis was the Act of 1781.

Having violently resisted the Court in the Case of Kasijora, the Governor-General and the Council, petitioned the House of Com-

[1] Revenue Consults., R. 50, Vol. 24. The plan for the administration of justice 88-124.

[2] I.P., Impey to Dunning, March, 1780, Vol. 16259, 235-37. Impey gives a list of Courts and their respective judges—Patna—J. Booth, made writer in 1776, Dacca—A. Duncans Dinajpore—Benjamin Findale Burdwan—Hugh Austin Moorshidabad—Thomas Ives Calcutta—D. Campbell 1771.

[3] *Ibid.*

mons for an Act of Indemnity; their petition together with the petition of British inhabitants in India was placed in and debated by the House on 1 February, 1781.[1]

On 12 February, 1780, the House debated General Smith's motion for the appointment of a committee on the petitions against the Supreme Court of Bengal.[2] The motion was carried and a committee of fifteen appointed to inquire into and report on the petition.[3] This Committee is well-known as Touchet Committee. It presented its report in 1781. On the above Committee's report the Bengal judicature Bill was drafted, went for its second reading in the House on 19 June, 1781; and was consequently passed into an Act.

The Preamble of the Act runs as follows:

'An Act to explain and amend so much of an Act, made in the 13th year of George III, as relates to the administration of justice in Bengal; and for the relief of certain persons imprisoned at Calcutta in Bengal, under a judgment of the Supreme Court; and also for indemnifying the Governor-General and Council of Bengal, and all officers who have acted under their orders or Authority, in the undue resistance made to the process of the Supreme Court.'[4]

We have referred to the provisions of the Act in an earlier chapter which deal with the Patna Case. Here we may briefly refer to those provisions which virtually abridged the powers and functions of the Court. Under the Act the Governor-General and Council of Bengal were not to be subject to the jurisdiction of the Supreme Court for any act done by them in their public capacity.

The Supreme Court was not to have any jurisdiction in any matter concerning revenue or concerning any act ordered or done in the collection thereof.

[1] Parl. Debates. Vol. XXI (1781) Cols. 1163-75.

[2] *Ibid.*, Cols. 1182-91.

[3] This Committee was appointed on 15 February, 1781. The following were its members:

1. General Richard Smith
2. C.W.B. Rous
3. Robert Gregory
4. Thomas Farrer
5. Edmund Burke
6. Dudley Long
7. Hon. John Townsend
8. John Elwes
9. George Dempster
10. Lord Lewisham
11. William Graves
12. Frederic Montague
13. William Pulteney
14. Sir Gilbert Elliot
15. Sir Walter James

[4] *Collections of charters and Statutes*, Act of 1781, 203-207.

No person was to be subject to the jurisdiction of the Supreme Court on account of his being a landowner, landholder, farmer of land, under-tenant or security for the payment of the rents.

No person by reason of his being employed by the Company, was to be subject to the jurisdiction of the Supreme Court in any matter of inheritance or contract except in actions for wrongs or trespasses, and also except in any civil suit by agreement of parties to submit the same to the decision of the Supreme Court.

The Supreme Court was to retain its powers to determine all actions against the inhabitants of Calcutta.

The Governor-General and Council were to hear appeals from the country Courts in civil cases, and their judgement was to be final, except in certain cases when appeal could be made to His Majesty.

The Governor-General and Council were to hear and determine on all offences committed in the collection of revenue; they were also to frame regulations for the provincial Courts.

And no action for wrong or injury 'shall lie in the Supreme Court, against any person whatsoever exercising a judicial office in the country Courts, for any judgement, Decree, or order of the said Court, nor against any person for any Act done by or in virtue of the Order of the said Court.'[1]

By its last clause the Act indemnified the Governor-General and Council and persons who had acted under their orders for acts done in resisting the processes of the Supreme Court during and after the Kasijora crisis.

As we see, the Act virtually restricted the jurisdiction of the Court to the town of Calcutta. It gave absolute power to the Governor-General and Council over the life and property of the Indians residing in the provinces.

The Act in its parliamentary stage was opposed and criticized among others by Dunning, Sutton and Dempster. Dunning and Sutton observed that the Bill censored the judges without hearing them. Sutton insisted 'that as it was contrary to justice, to condemn even the guilty unheard, so it was still greater, when the innocent were condemned without a trial; and that the judges in India were innocent, was a fact which he would pledge himself to prove'.[2] Dempster objected to the clause which gave the Governor-General

[1] *Ibid.*

[2] Parl. Debates, Vol. XXII 1781, Cols., 549.

and Council of Bengal, a supreme, arbitrary, and uncontrolable power over the lives, property, and reputations of the Indians.[1]

But the opposition to the Bill as offered by a few lawyers did not out-balance the full support given it by Burke and his supporters. Burke gave a long discourse on what Indians were like and asserted that a despotic system of government was more suited to their traditions than the free and balanced system of government that existed in Britain. By abridging the powers of the Supreme Court, the legislature was tending to establish a solid government which would at least give security to the governed. 'This was necessary', Burke argued, 'for the actual preservation of the territories; for no government could subsist without authority', and added that it was perfectly useless for him in that place, and in that season, to inculcate the necessity of strengthening the hands of government in that quarter of the world.[2]

It may be here observed that the American reverses had much to do with the speedy enactment of the Bill. By misrepresentation of fact, the Governor-General and Council had made the directors, and through them the leading men of the country, believe that the Supreme Court by unrestricted exercise of powers had rendered the government unstable and weak. It was impressed upon London that India would be lost to the British Empire if the Court's powers were not abridged. The legislators were alarmed. Hence, when it was put to them by Burke and others, that the only way of retaining Indian possessions was to curb the power of the Supreme Court, they readily agreed. After losing the American Colonies the legislators were determined to retain India.

The last and the remotest consequence of the Kasijora crisis was a charge grounded on the proceedings of the court in the above case and added to the articles of impeachment levelled against Impey in 1787.[3]

In the above article of impeachment, Impey is accused of 'High Crime and Misdemeanours' on the following alleged facts:

That the writ of capias was issued on an irregular and informal affidavit.

That the sheriff's men committed several excesses in the execution of the writ of sequestration.

That Impey being a privy to the above illegal proceeding of the Supreme Court, was guilty of a 'High Crime'!

[1] *Ibid.*, Col., 554. [2] *Ibid.*, Cols., 554-56. [3] *Articles of Charge*, 34-36.

It may be observed at the outset that this charge was never examined by the House. Now, looking at the charges as they stand on the record, one may reasonably conclude that they are ill-founded.

As regards the affidavit and the capias issued thereon, it may be first observed that it was Hyde, and not Impey, who issued the capias. For the justification of the writ of capias, we have to refer to rules seventeen and eighteen of the Supreme Court, under which affidavits were made and processes of the court issued thereon. Under the above rules no summons or capias could be issued against the defendant by the court unless the plaintiff specified in his affidavit in what manner the defendant was subject to the jurisdiction of the Supreme Court.[1] We have observed before that Kashinath in his affidavit specifically mentioned the manner in which the defendant, Raja Sundernarain, was subject to the jurisdiction of the Supreme Court. It may be recalled that the plaintiff did state in his affidavit that the Raja having executed two bonds in the town of Calcutta, on which the plaintiff's claim was based, and being employed in the service of company for collecting revenue was subject to the jurisdiction of the court. It may be further observed that the Raja was in fact indebted to the plaintiff.[2] Furthermore, the status of a Zamindar, at the time when the affidavit was made, was undefined. The Act and the charter did not explicitly exclude them from the jurisdiction of the Supreme Court. If the court wanted to determine whether the Zamindars were, or were not, under its jurisdiction, it had no other means but to issue process for their appearance and then allow them to show that they were not under the jurisdiction of the court. In view of the fact that the defendant appeared to be indebted to the plaintiff, and there was no precedent on the record to show that the Zamindars were outside the jurisdiction of the court, there is no reason why Hyde should not have issued the writ against the defendant.

The second allegation, that the sheriff's men committed accesses is false. The house of Raja Sundernarain was not plundered nor its sacred apartments poluted. On the contrary. we find that sheriff's men were violently resisted by the Raja's servants in the period intervening between their arrival at Kasijora and their arrest by the army men dispatched by Ahmuty.

[1] I.P., Rules and Orders of the Court. Vol. 16269, 7-8.

[2] Revenue Consults., R. 50. Vol. 28, 238-39.

CHAPTER VIII

THE LAST THREE YEARS: A TEMPORARY SETTLEMENT 1780-83

The Kasijora crisis abruptly ended the six years' old quarrel between the Council and the Court. For the first ten months of the year 1780 the Supreme Court lay subdued, and inactive. The Hastings-Francis alliance precluded any conciliatory move towards the Court. But the alliance proved to be a short one and when it was finally broken in August, 1780, Hastings took the opportunity to put Company's house in order and to repair the damage that had been done to the King's court.

Impey's appointment to the judgeship of the Sadar Diwani Adalat, 1780

We have noticed that one of the immediate consequences of the Kasijora crisis was the separation of the *Diwani Adalat* from the provincial councils and the appointment of separate judges to the *Adalat*. Hastings thought that this arrangement would lead towards a better and speedier administration of civil justice. But he was disillusioned when the quarrels between the provincial councils and the superintendents of the *Adalats* grew fierce and frequent.[1] Besides, the superintendents were young, impatient, inexperienced and corrupt. On occasion they were guilty of oppression and one of them, Booth, was later dismissed for "gross corruptions and misbehaviour."[2]

Hastings knew that though the evils of the *Adalats* were incurable "they may admit of palliatives". He was never reluctant to try new experiments. Francis, on the other hand was opposed to any interference in the Mughal system that prevailed before the British took over the Diwani of the provinces. If he had had his way, he would have revived the dual system of Clive.

The accommodation between Hastings and Francis, which took Sir John Day some months to bring about, was short-lived.[3] Nearly

[1] 1st Report, Select committee, 1782, Deposition of John Shakespear 396, John Shakespear was chief of the Council at Dacca from January, 1778 to December, 1780.

[2] I.P., Vol. 16260. Impey to Dunning, 12th November, 1780, 17.

[3] *Ibid.*, Vol. 16259, Impey to Dunning, 27 January, 1780, 290-93.

completed during the Kasijora crisis it hardly survived till July, 1780. In August Hastings recorded a strong minute against Francis; judging of the latter's public conduct by his private, he found it to be "void of truth and honour"[1] Francis then challenged him to a duel which was fought on 18th August. Francis was wounded.[2] The duel broke the alliance, with no hope or desire left in Hastings for reconciliation. With the support of Coote and a casting vote he could thwart a Francis-Wheler onslaught. And he had gone a long way to win over Sir Eyre Coote to his side; he had given him absolute patronage of the army and some additional allowances. Coote earned altogether £32,000 per annum.[3]

The short-lived Hastings-Francis alliance was one of the factors which had turned the Kasijora affair into a crisis. It is doubtful whether Hastings if left to himself, would have chosen to march troops to arrest the officers of the Supreme Court, towards which he had so far been grudgingly respectful and which at that time was presided over by his school-days' friend.[4]

This was the price he paid for the alliance, and during the period in which the operations were carried against the court he, as bound by agreement, was obliged to turn a deaf ear to the entreaties of his friend, Impey. The mere fact of his having conversed with Impey was deemed by Francis a breach of contract which needed explanation. When Francis heard about the private conversations which had passed between Hastings and Impey on Kasijora affairs, he reproachingly called upon Hastings for explanation and was not satisfied until assured that the Governor-General contemplated no deviation from the stand already taken against the court.[5]

While the Hastings-Francis accommodation persisted, Impey stood humiliated and powerless in the eyes of Indians whose cause he had championed against the excesses of the Government. The court lay subdued, its independence and dignity impaired. Writing as late as 16 August to Lord Weymouth, Impey stated that not a single attachment had been executed outside the limit of Calcutta.[6] The period between January to August was a period of helpless inactivity

[1] Forrest, *Selections*, Vol. II, Proceedings of the Secret Department, 20 July, 1780, 712.

[2] F.P. E. 14 Francis to Lord North, 27 August, 1780, 497-500.

[3] I.P., Vol. 16259, Impey to Dunning, 15 June, 1780, 379-80.

[4] H.P., Add., Mss., 29128, Hastings to Pechel, 14th March, 1780, 249.

[5] 1st report, select Committee, 1782, Francis' deposition, 393.

[6] I.P., Vol. 16260, 5-6.

for the court, and of frustration and humiliation for Impey. "I have been made a sacrifice to new connection. But however close the present union may be between Mr. Hastings and Mr. Francis, I believe you will join with me in thinking that it cannot be durable... But though the treatment I have received is not what I had reason to expect, I am resolved not to act as adversary to him [Hastings] in any respect, but in the cases in which he has or shall make it necessary for me to do so in self defence"—so wrote Impey to Dr. Fleming on 5 May, 1780.[1] As he had written to Dunning so he wrote again to Masterman, in almost the same language and with the same anguish, "that the power which is exerted against me, would not have been in the hands in which it now is" without his assistance.[2]

After the rupture between Hastings and Francis, Hastings might have realised the futility of an alliance with his avowed enemy and quite naturally have regretted the alienation of his trusted friend. Besides, the new *Adalats* having failed in their purpose, they were either to be replaced or reformed, if elementary justice was to prevail in Bengal. Hastings, therefore, devised a plan which he calculated should best serve both purposes.

On 29 September, 1780 he minuted a motion to appoint Sir Elijah Impey to be the judge of the *Sadar Diwani Adalat*.[3] The motion together with the individual opinion of the councillors was placed before the council on 24 October, 1780.[4] Sir Eyre Coote assented to it; Wheler and Francis were opposed. The motion was passed by the casting vote of the Governor-General. Hastings recommended that a salary of 5,000 sicca rupees, and 600 sicca rupees per month for the rent of an office, might be allowed to the chief justice for this appointment; and that the motion do lie for the consideration of the board at their future meeting.[5] A formal offer together with the board's resolution was sent to Impey who accepted the office, "under its present regulations, and such other as the Board shall think proper to add to them or to substitute in their stead".[6] The motion regarding the salary was not placed before the council until Francis had left India for England. On being asked by the Select Committee of

[1] *Ibid.*, Vol. 16263, 36-38.
[2] *Ibid.*, Vol. 16260, Impey to Masterman—1 March, 1780, 13-14.
[3] Revenue Consult., 29 September, 1780, R. 50 Vol. 28, 756-66.
[4] *Ibid.*, 24 October, 1780, R. 50, Vol. 29, 1-21.
[5] *Ibid.*, 29.
[6] 1st report, Select Committee, 1782, App. 4, 432.

the House as to what prevented the salary from being affixed to the office, Francis deposed: "That Sir Eyre Coote was gone to the coast, Mr. Wheler and himself were avowedly against the proposition; and of course, if the question had been put, it would have been lost".[1] Francis left India on 3 December, 1780; the salary as recommended by Hastings was approved by the Council on 22 December, 1780. As Francis had declared his intention of leaving India at least a month before he actually left, Hastings could well nigh wait until he left. Impey was officially told of the fixing of the salary in January, 1781.[2]

Among the critics of the new arrangement were mostly the old enemies of Impey and the Supreme Court. To Burke and his party in England it gave an opportunity to arouse popular resentment against Hastings and Impey, to make tirades against their character and integrity and to bring a motion in Parliament for the recall of Impey, which was eventually passed. One of the articles of impeachment, which was exhibited against Impey four years after his recall, related to this acceptance of the judgeship of the *Sadar Diwani Adalat*.[3]

We may, therefore, pause here to examine the implications of this episode. With what motive and purpose was the offer made and accepted and on what grounds was it opposed and criticised? Those who opposed and vehemently criticised the arrangement, were Francis and Wheler in India and a Select Committee of the House in England. The Select Committee which was appointed by the House to inquire into the matter, was briefed by Francis, who was in London at that time, and was dominated by Burke. For convenience we shall first describe the argument for and against the arrangement, and then make some general observations upon them.

Hasting's motion of 29 September was grounded on two main principles; Firstly the new *Diwani Adalats*, which had lately entered into a quarrel with the provincial council, needed extraordinary attention during their infancy so that "they may neither pervert the purposes, nor exceed the limits of their jurisdiction, nor suffer encroachments upon it".[4] The *Sadar Diwani Adalat*, being constituted as it was of the members of the council, had failed to give this

[1] *Ibid.*

[2] I.P., Vol. 16260, Impey to Lord Ashberton, 1 November, 1782, 187-89.

[3] *Articles of Charge*, 5th charge, 37-39.

[4] Revenue Consult., 29 September, 1780; R. 50, Vol. 28, 757.

extraordinary attention and effective control, and was less likely to discharge that function in future. Therefore, the authority to control and supervise the new courts must be vested in a person, or body of persons, who by virtue of being in possession of some independent weight, might be suited for the purpose. Sir Elijah Impey by virtue of his superior legal training could be a good instructor to the superintendents of the *Adalats* and as the chief justice of the Supreme Court he might further restore confidence in them.

Secondly, the appointment of Impey would lessen the distance between the court and the council and supply an 'accommodating temper', the want of which had been the root cause of the quarrel between the court and the council. It was not any accession of power to the court when that portion of authority which was proposed to be given, was given only to a single man of the court, "and may be revoked whenever the Board shall think it porper to resume it."[1]

Major John Scott on being examined by the Select Committee on the efficacy of the appointment, said, it was advantageous in more than one way.[2] First, it would save the revenue of the Company—the loss of revenues in consequence of appeals made to that court since its institution amounted to about a million sterling. Secondly, Impey as judge of the *Sadar Adalat* would not be bound to administer English law which was in many cases vexatious to the Indians. Thirdly, the judges of the provincial courts would no longer be apprehensive of being sued in the Supreme Court for their judicial conduct. Fourth, the appointment would effectively prevent the interference of the Supreme Court in the matter of revenue. Fifth, it might bring security which, at a time when the Bengal government was waging wars against the Marathas was a dire necessity.

As against the above may be enumerated the opinion of Francis, Wheler and members of the Select Committee.

To Francis, the settlement amounted to a direct contradiction of everything that was said or done by the council in the Kasijora case.[3] He argued, if the institution of Provincial *Diwani Adalats* had caused competitions between them and the Provincial Councils, it was the

[1] *Ibid.*

[2] 1st Report, select committee; 1782, 396-400: Maj. Scott had served in India for 15 years, for the last two years he was Aid de Camp of Hastings and also served as his secretary. He left Calcutta on 9 January, 1781. Hastings had appointed him his agent in England for explaining any part of his public conduct.

[3] Revenue Consults., 24 October, 1780, R. 50, Vol. 29, 1-3.

duty and business of the Supreme Council to put an end to them by it authority "which is direct and sufficiently coersive over both parties." He conceived that the appointment of the chief justice to this office "would clash and be inconsistent with the duties of his present regime." Furthermore, this would tend to make a breach between the chief justice and the other judges of the Supreme Court. The appointment of a single judge to a superior court of appeal was not consistent with the principles of justice. Final appeals should not be heard by a single man. "If all the powers of the Sudder Dewanny Adaulut be vested in one man, yet so vested 'that they may be revoked whenever this Board shall think it proper to resume them', such a judge may become, in the hands of a corrupt council, an instrument of oppression."[1]

Wheler supported Francis' stand with his own remarks and suggestions.

The Select Committee which was appointed on 15 February, 1781, to take into account the administration of justice in Bengal, Bihar and Orissa and report thereon, submitted its first report on 5 February, 1782.[2] The first report was entirely devoted to Impey's acceptance of the judgeship of the *Sadar Diwani Adalat*. On the matter under investigation the Committee examined only three witnesses who were then in England. Of these three—Francis, Shakespear, Scott—two were avowed enemies of Impey and Hastings. Francis was the prime-mover in the whole business. His main object was to get Impey recalled and Chambers appointed in his place. About two months after his arrival in England he wrote to Chambers that except Dunning there was no supporter of Impey and the Supreme Court in the Westminster Hall, that Impey was a condemned man and nobody had power enough to save him.[3] About a year before the impeachment motion was brought in the house against Impey, Francis wrote to Chambers, that an attempt would be made to impeach Impey "in whose fate, I know you are interested".[4] In the same letter he assured Chambers that there was no

[1] *Ibid.*

[2] Parl Debates. Vol. 23 (1781) Col. 718.

In 1781 two committees were appointed; a select committee to report on the administration of justice in India and a committee to report on foriegn policy of the government. Gen. Smith was the Chairman of the select committee, and Dundas of the secret Committee.

[3] Quoted in Busteed—*Echoes*—232.

[4] F. P., *EUR MSS.* E. 19 letter No. 13 of 20 December, 1786.

chance of Impey's going back to India and no administration would supercede you. Francis was intimate with General Smith and had insinuated himself into the confidence of Burke. The majority members of the Select Committee were hostile to Impey and Hastings. Their observations were a foregone conclusion. On receiving the intelligence of the appointment of the Select Committee and the names of its members Impey could forecast that their report would be unfavourable.[1] When the House was debating a motion for printing the report of the Select committee, Governor Johnston called it "frivolous, ridiculous, and absurd", fit to be presented on such a day as 1 April.[2] Sir William Jones objected to the printing of the report "as such a measure, disseminating a charge through the world, unaccompanied by a defence, would create a bias in the minds of men, greatly to the prejudice of persons who were the objects of this report."[3]

The Committee classified its observations mainly under five headings viz. on powers and authorities of the office of the judge of *Sadar Diwani Adalat*, on the circumstances in which the arrangement was made, on the expediency and policy of that establishment, on the legality of the authority upon which the arrangement had been made, and on the evil effects of the arrangement upon the Indians, government, judges and British subjects in India.[4] Most of the committee's arguments are a mere repetition of what Francis had minuted in the consultation, or stated before the committee. Hence we do not need to mention them. The committee observed that the circumstances and the manners in which the transaction was hurriedly completed cast a reflection upon the motive of its executors. The advice of Sir John Day, the company's Advocate-General was not sought on the legality of the transaction. On the expediency and policy of the establishment, the committee remarked that 'the power of the Governor-General over the whole royal and municipal justice in Bengal, Bihar and Orissa, is as absolute and uncontrollable, as both those branches of justice are over the whole Kingdom of Bengal.'

As regards the legality of the transaction, the committee observed that the *Sadar Diwani Adalat*, as constituted under the new arrangement, seemed to be a new court, for, whereas the old court was only

[1] I.P., Vol. 16260, Impey to Masterman, 14 September, 1781, 46-57.
[2] Parl Debates, Vol. 23 (1782) Cols 715-6,
[3] *Ibid.*
[4] 1st report, select committee, 1782, 403-15.

a court of appeal, having five judges who were servants of the company, the new court had appelate and original jurisdiction and was constituted of a single judge who was a crown-servant. Had the council power to create a new court? The Committee after examining the two sections of the Act of 1773 (secs. 36 and 7) which relate to council's power to pass ordinances and by-laws, found that the Act did not intend to transfer to the council any such power, by which it could create a new court. However, the Committee does not seem to have been certain about the illegality of the arrangement. Nevertheless, it observed that the arrangement was illegal on procedural grounds. Under the Act of 1773, any ordinance or by-laws must be registered in the Supreme Court, which formality having been not observed in the present case, the whole transaction was illegal.

The committee further observed that the arrangement had violated another section of the Act which prohibited the members of the council and the judges of the Supreme Court from taking any other emoluments than that was attached to their office.

On the effects the arrangement might produce on Indians, the committee observed that this would deter them from preferring complaints in the Supreme Court against the council and in the council against the court. The other judges would be disappointed by the settlement. They would lose interest in their work and might try for lucrative appointment in the service of the company. Those members of the council who had opposed the Supreme Court would feel that Hastings had deserted them. The British subjects, who had lately petitioned against the court, would be mortified at the elevation of their enemy to such an office.

In conclusion the committee observed that Francis and Wheler had acted consistently and properly in resisting the new arrangement, and Chambers and Hyde had no share in or been assenting to, any part of it.

Observations on the Settlement

It seems that the opponents of the arrangement deliberately miscalculated the extent of the jurisdiction and power of the *Sadar Diwani Adalat.*

In April, 1780 Hastings had deprived all the provincial *Adalats* of revenue jurisdiction which lay now with the provincial councils. The *Adalat* were to try only civil suit which involved matters of

succession, inheritance, personal property and debts between the Indians. They were even denied the power of summoning a farmer, renter or Zamindar. The arrangement made in October introduced changes in the composition of the court of appeal, but no change in the jurisdiction and powers of the subordinate courts. The revenue-officers whom Impey called the potential oppressors, remained outside the jurisdiction of his *Sadar Diwani Adalat*. All revenue cases, and all complaints against the revenue-officers were to be instituted in the provincial councils. Appeals against the decisions of the provincial councils lay with the Governor-General and the Council. Thus, in coming to a settlement with Impey and the Supreme Court Hastings did not give up any claim which he had so far withheld against the Supreme Court. The court and the council had been quarrelling over the amicability of the farmers and Zamindars to the jurisdiction of the Supreme Court. This was the issue directly involved in the Kasijora case. Thus, the allegation of Francis that the arrangement amounted to a direct contradiction of everything that was said or done by the council in the Kasijora case, seems ill-founded. On the contrary, we find that Hastings by assuaging the acrimony that existed between the court and the council, tactfully secured for future a 'non-interfering attitude' of the judges in revenue matters.

Another objection that the appointment of the chief justice to *Sadar Diwani Adalat* would clash and be inconsistent with his duties as chief justice of the Supreme Court, seems more imaginary than real. Francis argued, suppose a suitor brought an action in the Supreme Court against the chief justice for having acted illegally in the *Adalat*, the chief justice would stand as a party in a court where he should preside. 'Again, suppose a person committed by any of the inferior Adalats, or by the chief justice of the *Sadar Adalat*, should apply to him for a writ of Habeas corpus, should he refuse the writ, because the grounds of the committments are already known to him.[1]

The above two hypothetical cases were based on the proceedings of the Patna case. Could it be imagined that Impey, with all his legal learning and professional integrity, would act as ignorantly and illegally as the members of the Patna Council did in the case of Naderah Begum? Supposing, for the sake of argument, that he did; even then we do not see the clash between his two offices. The Supreme

[1] Revenue consults., 24 October, 1780; R. 50, Vol. 29, 8-10.

Court, had very clearly laid down in Gowrychand's case that except for 'manifest corruption' it would not entertain any suit against the illegality or irregularity in the proceedings of the company's court. Therefore, the Chief Justice, as the judge of the *Sadar Diwani Adalat* could be sued, if at all, only for 'manifest corruption'.[1] The fear that his integrity might be questioned in the Supreme Court by his brother judges, if ever he become corrupt, was likely to deter him becoming an instrument of oppression in the hands of a corrupt council. As regards the second hypothesis of Francis, it may be once again observed that the *Sadar Diwani Adalat* and its subordinate courts had no criminal and revenue jurisdiction.

Criticism of the arrangement in that it placed the power of hearing appeals in a single person is more theoretical than practical. Under the situations as it existed at that time the choice lay between 'no-appeal' and 'appeal to a single person'. The members of the Council had ceased to seat in the *Sadar Diwani Adalat* since 1775. They had no time to and interest in understanding the intricacies of Hindu and Muslim laws. The members of the Provincial Council, who constituted the *Diwani Adalats* before the changes were introduced in April, 1780, were equally disinterested in the adminstration of civil justice to the Indians. Trade, territory and revenue, not the administration of justice were the pressing concerns of the company's servants. As a result it were the Indian law-officers, the ill-paid Qazies and Mufties, who adminstered civil justice in the name of the members of the Provincial Council. Since the court of appeal had closed its doors the decisions of these law-officers, were final. Was it commendable to rest satisfied with this state of administration of civil justice in the provinces? Or to place at the top of the system a judge of Impey's calibre, who by his vigour, legal knowledge and professional interest, might organise the *Adalats* and instruct their judges?

Wheler's suggestions that either all the judges and councillors should constitute together the court of *Sadar Diwani Adalat* or the company's law-officer or any of the puisne judges should be appointed to the office deserves notice. Impey and Hastings had drawn a plan in 1776 which was referred by Wheler, and which we have

[1] In the 69th Article of the Code which Impey drafted for the functioning of the *Adalats*, he laid down that if the judge of the *Sadar Diwani Adalat* received any money, he would incur the like penalities as were enacted against officers of the *Mufassal Diwani Adalats* (Duncan, *Regulations*, 4.)

discussed in an earlier chapter.[1] That was a most comprehensive plan, which united the judges and the councillors into an all powerful legislative, judicial and executive body. Uniting the judges and the councillor in a body for the adminstration of only civil law would have been more pompous than useful. A body of eight persons, by no means harmonious, would have been ill-suited for the purpose. Besides, it is doubtful whether the councillors had time enough to sit in the *Sadar Diwani Adalat*. When they had not found time for the last six years, it was highly improbable that in future they would find enough time to take interest in the affairs of the *Sadar Diwani Adalat*. Among the company's law officers at that time there was only one, Sir John Day, who could be considered qualified and competent for the post. But he could not be appointed to be the judge of a company's court until he relinquished the office of Advocate-General.

The appointment of a puisne judge instead of the chief justice at the head of the *Sadar Diwani Adalat* would mean a preference without reason. It is doubtful whether any one else in India except Chambers, would have been able to frame the voluminous codes and regulations which Impey framed for the *Adalats*.

At any rate, had the offer been made to any of the puisne judges there is no reason why the chief justice should not have felt insulted. Although, it can be conjectured with some certainty that had Chambers been appointed to the office, Francis's minute would have been written in support rather than in opposition to the arrangement. His opposition was based not on principles but on personal prejudices.

Equally untenable is the Committee's remark that the arrangement gave additional powers to the Governor-General over the Supreme Court. The Court was not affected by the arrangement. The only way Hastings could possibly influence the court was by using Impey as a tool. This he could not do because Impey though a good friend was also a devoted judge.

Impey had proved by his conduct in the Kasijora case that he would rather suffer a rupture of his private friendship than compromise with the independence of the court. In one of his letters to Wallace he remarked.

> "...as I am conscious of having acted to the best of my judgement in pursuance of my duty, (of which the sacrifice of my

[1] See Chapter IV.

private friendship when put in competition with it, is I think some evidence) I have no apprehensions for myself."[1]

The Committee contended that the settlement would deter the Indians from seeking remedies in the Supreme Court against the servants of the company. We have observed before that a large percentage of the suit which the Indians used to file in the Supreme Court was against the oppressive and corrupt acts of the company's revenue officers. A few months after the settlement was made Parliament by passing the Act of 1781 expressly prohibited the Supreme Court from entertaining complaints or suits regarding matters of revenue. However, the settlement itself did not deter the Indians seeking such reliefs in the Supreme Court. Between October, 1780, and May, 1781, at least two such cases came before the Supreme Court.[2] The first concerned a resistance to court's process, but the prosecution was dropped; the other was a suit against one of the provincial chiefs and his Council, "for forcibly dispossessing a suitor of the court, who had been in quite possession of land under an execution of the Supreme Court, and repossessing the person against whom judgement had been given" Impey proposed an arbitration to which the defendant, which in this case was the Government, and the plaintiff agreed. Here we can see the real effect of the settlement; an accommodating spirit on the part of both the Court and the Council.

As regards the adverse effects of the settlement upon the other judges, it may be observed that Impey did consult Chambers who assured him that the transaction did not violate any provision of the Act of 1773.[3]

Wheler who had opposed the proposition in the beginning seems to have later apologised to Impey and confessed that his opposition was prompted by party politics than personal convictions.[4] The persons who might have been really mortified by the new arrangements were the British subjects and a large percentage of Company's Servants, who for reasons noticed before,[5] had personal grudges against the Court.

[1] I.P., Vol. 16260, Impey to Wallace, 9 October, 1781, 75-76.
[2] *Ibid.*, Impey to Thurlow, 4 May, 1781, 67-72.
[3] *Ibid.*, Impey to Sutton, 31 August, 1781, 78.
[4] *Ibid.*, Impey to Dempster, 18 November, 1782, 216-21.
[5] See Chapter VI, Touchet Petition.

The committee's objection to the acceptance by Impey of a salaried job did carry some weight and since then has been the main argument of the critics against the arrangement. On this we shall first refer, to the opinion of Dunning, Wallace, Mansfield and Rous, who were the distinguished jurists of the time.[1] Though they had professional affinity with Impey, yet they were more impartial than the members of the Select Committee. Their opinion was sought by the Company on the issue of the appointment of Impey to *Sadar Diwani Adalat*. Dunning, Wallace and Mansfield were of unanimous opinion that the appointment with the salary affixed to it was legal, not contrary to the Act of 1773, and quite compatible with Impey's duty as chief justice of the Supreme Court.[2] Rous gave a dissenting opinion, holding that the appointment with a salary was contrary to the Regulating Act. After a few days, Mansfield revised his former opinion. Although the Act did not expressly prohibit the judges to accept any such office with a salary affixed to it, Mansfield believed that the intention of the Act was to create an independent judiciary. He doubted whether the acceptance of the salaried office was not contrary to the intention of the Act.

Thus we find that the opinion of the counsellors was divided on the issue. Had not the office been a salaried one the counsellors would have assuredly been unanimous on the legality of the transaction.

Sixty years afterwards Macaulay commented on this transaction in the following words:

> "It was understood that, in consideration of this new salary, Impey would desist from urging the high pretentions of his court. If he did urge these pretentions, the Government could, at a moment's notice eject him from the new place which had been created for him. The bargain was struck, Bengal was saved, and appeal to force was averted; and the chief justice was rich, quiet and infamous."[3]

Mill conceived that by offering to the chief justice a large portion of money and power, the Government "lost no part of that power which they lent to him, but gained the command even of that which he

[1] 1st report, Select Committee, 1782, 417-23.

[2] *Ibid.*

[3] *Edinburgh Review*, 1841-42; Vol. 174, Warren Hastings; 204.

derived from another source."[1] Even Stephen, who believed that the arrangement which was made in November was the "only way in which it was possible to lay the foundation of anything like a regular and efficient administration of justice in India", could not find an absolute justification for Impey's conduct in receiving the salary.[2] Barwell Impey in his "memoirs" emphatically denies that his father ever accepted the salary.[3]

At this stage our inquiry must, perforce, be carried into the conduct of Impey, prior and subsequent to the completion of the transaction. Did he really accept the salary? If he did, did he accept it knowing that it was contrary to the intention of the Regulating Act?

One fact, which has so far not come to the notice of those who have commented on this subject is, that before leaving England Impey had conversed with Thurlow on the probability of his being offered the judgeship of the *Sadar Diwani Adalat*.[4] Thurlow as we shall presently see, had given his prior approval to such a measure. Informing Lord Thurlow of his acceptance of the office with the salary affixed to it, Impey wrote:

> "This I took to be conformable to the conversation I had the honour of holding with you, when I suggested the probability of such a proposition being made to me!"[5]

On 31 August, 1781, he wrote to Sutton:

> "The office I thought I might safely accept first because I had conversed with Thurlow, then Attorney-General, in England on the probability of an offer of the same appointment being made me, when he said he thought I might take the office but would do right to write to England before I applied any salary to myself."[6]

[1] Mill, *History of British India*, Vol. IV, 351.

[2] Stephen, *Story of Nuncomar*, Vol. 2, 241.

[3] Impey, *Memoirs*, 227 N.

[4] James Stephen, who alone seems to have gone through the private papers of Impey, overlooked a few letters which prove that Impey had obtained the approval of Thurlow prior and subsequent to his acceptance of the office. Thurlow was Attorney-General when Impey left England; he was appointed Lord Chancellor on 2 June, 1778.

[5] I.P., Vol. 16260, Impey to Thurlow, 4 May, 1781, 69.

[6] *Ibid.*, Impey to Sutton, 31 August, 1781, 78.

At the time when the office was accepted by Impey Thurlow was the Lord Chancellor, the official superior of Impey. In conformity with the chancellor's desire, Impey took the earliest opportunity to inform him of his acceptance of the council's offer and sought his advice on the propriety of accepting the salary which was attached to the office and which he would not apply to his own use until he got the approval of his Majesty's Ministers. In January he got the intimation about the salary; in April he wrote to Thurlow:

> "In January last the Governor-General and council settled the establishment of the judgeship of the Sudder Dewanny Adalat at 5000 rupees per month; this I have received, but shall be ready to refund it, if you or any other of His Majesty's Minister shall intimate to me that it is improper."[1]

There is evidence to suggest that Impey did not touch the salary. After he wrote the above letter he wrote another letter to one of his friends and in that letter he mentioned that:

> "The salary had been received by my Baniyan who is the officer to receive it, and the other money for the establishment of the court, but it has not been applied to my use; it is kept in sealed bags separated from my other cash."[2]

Writing again to Thurlow in May, Impey sought his definite approval and expressed his readiness to refund the salary received so far if its acceptance was deemed improper.[3] He informed the council of his intention to defer applying the salary to his own use until he heard from the Lord Chancellor:

> "As this is the first opportunity I have had of addressing you since you were pleased to appoint a salary for the judge of the Sudder Dewanni Adalat I now take it, to return you my thanks for this mark of your attention to me. When you did me the honour of appointing me to the weighty trust which belongs to the office of the Sudder Diwani Adalat, I immediately acquainted His Majesty's Lord Chancellor therewith and have since informed him that

[1] *Ibid.*, Impey to Lord Thurlow, 1 April, 1781, 46.
[2] *Ibid.*, Impey to (x) Date nil, 61-65.
[3] *Ibid.*, Impey to Thrulow, 4 May, 1781, 69.

> a salary has been annexed to the office, but that I should not apply it to my own use if it was thought improper by his Majesty or his Lordship...It has been paid to the person who receives the salaries of the officers of the court, but I shall not suffer it to be applied to my use until I can hear from England!"[1]

A letter of similar import was written to Sutton, informing him that he had taken the earliest opportunity to inform Thurlow and Wallace about the office and the salary attached to it and that he would not apply the salary to his own use until he heard from Thurlow.[2]

In June, 1782, when Impey had almost made up his mind to leave India on health grounds, he again wrote to Thurlow:

> "I wrote to you...that the Governor-General and the council had fixed a salary of 5000 rupees monthly on the judge of the Sudder Dewanni, that I had deferred applying it to my own use, till I was furnished with your opinion about, as I most probably shall not be able to receive that before I embark for England I shall pay every rupee into the company's treasury before my departure which be applied to the use of the Company, if it is thought I I ought not to receive it."[3]

He conveyed to his friend Sutton.[4] a similar resolution that before leaving India he would refund the salary.

The long-awaited letter of Thurlow was at last received by Impey on 4 November, 1782, but then he was about to resign the judgeship of the *Sadar Diwani Adalat*.[5]

This letter of the Chancellor was dated in May, 1782, possibly it was written after Parliament had passed the recall motion against Impey.[6] In his letter Thurlow seems to have given Impey his warm support and approved his past conduct. Referring to this letter Impey wrote to Kerby his friend.

[1] H.M.S., Vol. 173, Impey to council, 5 July, 1781, 358-59.

[2] I.P., Vol. 16260, Impey to Sutton, 31 August, 1781, 77.

[3] *Ibid.*, Impey to Thurlow, 6 June, 1782, 134-35.

[4] *Ibid.*, Impey to Sutton, 6 June, 1782, 140-41.

[5] *Ibid.*, Impey to Dr. Smith, 30 November, 1882, 214-16. In this letter Impey gives the date on which he received Thurlow's letter.

[6] *Ibid.*, Impey to Michael, 17 November, 1782, 192-93. Stephen's observations that Impey wrote so many letters to Thurlow, from India but got reply to

> "I was about to leave this place, but in consequence of a most warm and strong letter from Lord Thurlow I have resolved to stay till a formal recall shall arrive."[1]

To his brother, Michael, he wrote that Thurlow had given him his full support:

> "I think I should behave improperly towards my friend and patron should I after such a promise desert my post."[2]

The various extracts from Impey's letters, as quoted above, go a long way to show that Impey had obtained the prior approval of Thurlow to his accepting such a salaried office which was offered him, in October, 1780; that even after accepting the office he did not appropriate the salary to his own use and kept it separate from his other accounts; that in conformity with Thurlow's desire and his own conscience he informed his superior in the office about the salary, and that in all probablity he did not touch the salary till November, 1782, when he received the approval and support of the Lord Chancellor. It is doubtful whether he ever applied the salary to his use, even after receiving Lord Thurlow's warm support. In November, 1782, when he received Thurlow's letter, he knew that Parliament had passed a motion for his recall. He was apprehensive of an official recall which he might receive any day. Under such circumstances he could hardly be expected to appropriate the salary which he had not touched for a year.

Apart from the Lord Chancellor's prior consent and subsequent approval, the existence of a strong precedent was the second factor which induced Impey to accept the job. He thought he might safely accept "because the judges are not under restrictions other than the members of the council, and no objection was ever taken to Clavering and Sir Eyre Coote being appointed Commanders-in-chief."[3] On 7 July, 1781, Robert Chambers himself was appointed to be the

none is not true (See Stephens *Story of Nuncomar*, Vol. 1. p. 33). Thurlow wrote at least thrice to Impey. His first letter was miscarried, his second letter dated 20 June, 1780 was received by Impey almost after a year through one Pott whom Thurlow had recommended to Impey for patronage and the third letter was received in November, 1782. (Impey Papers Vol. 16259, 194-206.)

[1] *Ibid.*, Impey to Cator, 20 November, 1782, 204.

[2] *Ibid.*, Impey to Michael, 17 November, 1782, 192-93.

[3] Impey, *Memoirs*, 227 N.

President of the Court of Chinsura and an additional salary of Rs. 3000 per month was attached to this office,[1] which he duly accepted and occupied until 15 November, 1782, when he resigned.[2] Impey accepted the office not because it promised pecuniary advantages in future but because by making the offer the council in fact reposed in him a trust "at a time when I am engaged in the most disagreeable contests with the Government."[3]

Nevertheless, he had every reason to expect that his troubles would be recompensed. To Dunning he wrote:

> "I shall not receive the emoulements of the office for nothing, for besides my being kept in continual daily attendances and to long hearings, the correcting inveterate abuses, the drawing rules and instructions for practice, the attention to see that they are observed, the getting the courts with regular habits, and the forming a new code by the revision of all the regulations which have been heretofore made which are rather voluminous, and to be picked out of extraneous matter—is a work of great fatigue in this. . . climate and a labour which half a year ago my constitution would not have allowed me to undertake."[4]

The above statement of Impey can be supported by what he actually did while he held the judgeship of the *Sadar Diwani Adalat.* Between October, 1780 and July, 1781 he prepared a code of procedure for the *Diwani Adalats.*[5] He was in this respect the first British Indian codifier. His code remained in force for six years, when it was re-enacted with amendments and addition by Regulations VIII of 1787.

We have discussed the matter in its various implications and found that objections which were made to the settlement and the charges which were hurled against Imepy were ill-conceived and untenable. Nevertheless, it was not public spirit which alone induced Impey to accept the office. Nor was the lust for power and money the main inducement. Impey being brought up and trained in

[1] 4th Report, Select Committee, 1782, 651-53.

[2] H.M.S., Vol. 352, 147-51.

[3] I.P., Vol. 16260, Impey to Sutton, 12 November, 1781, 18.

[4] *Ibid.*, Impey to Dunning, 6 May, 1781, 67-65.

[5] Duncan, *Regulations*, 1-215. This code of procedure consisted of 95 Articles. Duncan made but few alteration and the code was passed by the Council in 1783.

English legal traditions, was quite naturally in favour of establishing in India a single uniform judicial system. He had never reconciled himself to the existence of the two separate judicial systems, one under Company's control and the other under Royal patronage; more so after his discovery that the Company's courts bore no semblence of justice. The plan of 1776, drafted by Impey and Hastings was a sincere attempt to combine the two systems in a single whole. We have seen that the plan did not receive the attention of the government in England. The settlement of 1780, though it did not completely unite the two judicial organisations in a single whole, gave an opportunity to Impey to be at the head of both the systems and thereby bring some uniformity in the administration of justice. At the time when the offer was made to him Impey had given up hopes of upholding the cause of the Supreme Court against the Government. The Supreme Court lay subdued and humiliated. An appointment which placed the Chief Justice at the head of the Company's courts would restore in the Supreme Court and its judges their lost dignity. It was, therefore, readily accepted. The fusion of the Company's Courts with the Supreme Court lay in the logic of the history. What Hastings and Impey tried to achieve in 1780 was finally accomplished by the High Courts Act of 1861, which amalgamated *Sadar Diwani Adalat* with the Supreme Court.

Impey's Journey to Banaras and Oudh; *July-December*, 1781

The settlement of 1780 established complete harmony between the Court and the Council.[1] But for domestic troubles—Lady Impey's miscarriage, the illness of their daughter Marion, and the disorders in Impey's arm and bowels—the first part of the year 1781 was spent in peace and contentment. In July Impey left Fort William on a tour of Bengal and Bihar, partly for a change of climate and partly for inspection of the district *Adalats*. In the same month Hastings left Calcutta for Banaras and Lucknow.

While Impey was at Moongher he received the news of Hasting's operations against the Raja of Banaras. The rebellion had started with the massacre of three English lieutenants and lasted until the end of September, when it was finally suppressed. On the request of Hastings, Impey reached Banaras on 25 October with Lady Impey and Mrs. Hastings. He approved of every measure which Hastings

[1] I.P., Impey to his brother, April, 1781, Vol. 16260, 14-28.

had taken against Chet Singh, from his arrest to his dispossession, and took affidavits from various persons, at Banaras and Lucknow, to authenticate the "Narrative" which Hastings had written of insurrections at Banaras. After taking these affidavits and depositing them with Hastings at Chunar, Impey returned to Calcutta by the end of December.

One of the articles of impeachment against Impey related to the affidavits he took at Banaras and Oudh. The House did not enquire into the charge but the critics of Impey have accused him of collecting false evidence to support Hastings who had unjustly dispossessed Chet Singh of his Zamindari.

We find that Impey did approve of Hastings' measures against Chet Singh. His approval might have been caused by a motive either to cover up the crime of his friend or to support and help him in a cause which he thought was right. An inquiry into Impey's motive must be preceded by a brief account of the circumstances that led to the Banaras rebellion.

The Zamindari of Banaras, which was under the suzerainty of the Nawab of Oudh, lay on the Western frontier of British possessions. Since 1764 it had been the policy of the President and Council to turn Banaras into a strong barrier against any attack on British territory by the Nawab.[1] This could be done only by befriending the Raja of Banaras and keeping him dependent on British power in some way or other.

It was in pursuance of this policy that after the death of Raja Balwant Singh in 1770 Hastings prevailed upon the Nawab of Oudh to confer the Zamindari on Chet Singh, the son of the late Raja.[2] The traditional enmity, that persisted between the Nawab and the family of Chet Singh, made Chet Singh dependent on Company's protection for a safe possession of his Zamindari.[3]

The arrival of the new Councillors in 1774 and the death of Nawab Shuja-ud-daulah in 1775 opened another chapter in the history of Banaras. On 13 February, 1775 the Councillors resolved that the treaty made with the late Nawab expired at his death, hence a new defensive treaty be executed with the new Nawab Asaf-ud-daulah. Accordingly, a treaty was executed between the

[1] Secret Consults., 29 March, 1764, R.A., Vol. 5, 112-13.

[2] Abstracts of letters from Bengal, No. 2, letter of 31 October, 1770, 31-32.

[3] *Ibid.*, Letter of the Select Committee, 24 December, 1770, 48.

Company and the new Nawab by which the Zamindaries of Banaras and Gazipur were surrendered in perpetuity to the English Company, subject to the entire rule and management of Raja Chet Singh as heretofore, on condition of his paying the same tribute to the English Company which he formerly paid to the Nawab of Oudh, and which tribute amounted to Sicca rupees 22,66,180.[1] A *sunnad* and a *pottah* were granted to Chet Singh by the Company.[2]

When the war was declared between English and French in 1778, the Governor-General and Council decided to raise an establishmen of three regular battallions of Sepoys at the expense of the Raja of Banaras and for that reason asked the Raja to pay a war subsidy of Rupees 5 lakhs.[3] Chet Singh expressed his inaiblity to pay the whole amount at once and requested the Council to receive monthly payments.[4] In a meeting of the Council on the above matter, Francis suggested that payments should be received in instalments and the Raja should be assured that the Council shall make no further demand on him.[5]

However, the Council decided by the majority votes to demand immediate payment of the whole sum from the Raja. The Raja made the payment in full on 10 October, 1778.

On 19 July, 1779, at which time the war between French and English still continued, the council resolved to ask the Raja for a second subsidy of five lakhs of rupees. Thomas Graham, the resident at Banaras, conveyed to the Raja the Council's decision and the Raja expressed his inability to pay.[6] The Council then decided to send two battallions of Sepoys to enforce the payment.[7] The Raja then offered to pay the subsidy in instalments, which the Council refused. Troops were sent to enforce full payment. Whereupon, the Raja paid the total sum of 5 lakhs plus a penalty of Rupees 20,000 for the expense of the two battallions that had been sent to enforce the payment.

[1] Secret Consults., 6 June, 1775, R.A. Vol. 29, 6-12.

[2] 2nd Report, Select Committee, 1782, 462.

[3] *Ibid.*, Council to Raja, 11 July, 1778, 463.

[4] Fawke Papers, EUR. MSS G. 3, Graham to Council, 14 September, 1778, 79.

[5] Public Consults. 28 September, 1778, R. 2 Vol. 25, 374-75.

[6] Fawke papers, EUR. MSS G. 3, Graham to Council, 15 August, 1779, 97-98.

[7] 2nd Report, Select Committee, 1782, 469-70, Wheler and Francis opposed the proposal, Barwell and Coote supported.

On 22 June, 1780, for the third time Hastings moved the Council to demand a subsidy of 5 lakhs of rupees from the Raja for the third year of the war.[1] The resolution was passed, and Francis Fawke, the resident at Banaras, was informed accordingly. The Raja first objected but when he was threatened with force, he paid the subsidy by 18 October, 1780.[2]

On 2 November, 1780, the Council decided to ask Chet Singh to supply cavalry force to the government till the conclusion of the war, after which they would be returned to him.[3] Chet Singh evaded this demand and did not supply a single horseman.

So much for the background; we may now describe in brief Hastings' operations against the Raja of Banaras.

In 1781 the Company's financial and political condition was very critical. The war with French had depleted the Company's treasury and a major war with Marathas seemed imminent. Hastings needed money to run the government. The Nawab of Oudh had not discharged his debts. Palmer in his letter to Anderson summed up the situation in the following words:

> "Taking war for granted as I do—how are we to prosecute it? No allies, no money—our Lucknow resources dried up. This Zemeindary [Banaras] unsettled and no appearance of weight or stability in the new authority here—Bahar is in great confusion and the whole revenue of it in danger of being lost."[4]

Oudh, therefore, was the destination, when Hastings left Calcutta on 7 July, 1781, for the upper countey. But the route lay through the Zamindari of Chet Singh who had given some provocation to Hastings for his past conduct.

The Council had invested him with full power and authority to form such arrangements with the Raja of Banaras as he thought might be in the better interest of the Company and good management of the Zamindari itself.[5] On 12 August, 1780, Hastings

[1] Secret Consults., 22 June, 1780, R.A., Vol. 55, 503-04.

[2] Fawke Papers, EUR. MSS G. 3, Fawke to council, 18 October, 1780, 124-25.

[3] 2nd Report, Select Committee, 1782, 476.

[4] Anderson Papers, Add. Mss. 45427. Palmer to Anderson, 16 Decebmer, 1781, 82.

[5] H.P., Add. Mss. 29200, original Resolution of the Bengal Council on the visit of Hastings to Banaras, 3 July, 1781, 34-35.

reached Buxur where Chet Singh met him with a "great fleet of boats which were crowded with two thousand armed and chosen men."[1]

This gave further provocation to Hastings and he refused to talk to him business until they reached Banaras, though Raja put his turban on his lap and begged his pardon.

Hastings reached Banaras on 14 August, 1781. On his arrival he wrote a letter to the Raja asking him to explain.

(a) Why he had made intentional delays in complying with the Company's orders?
(b) Why he had not furnished a body of horse for Company's service?
(c) Why he had tried to create conflict in the government at Calcutta?[2]

The Raja's reply did not satisfy Hastings; hence he was put under a house arrest at Siwalla Ghat on 15 August. Negotiations were carried between Hastings and Raja through Markham. Hastings' resentments were cooling down. It was then on 16 August that a large body of men came over from the other side of the river, overtook the guards, and released the Raja. The Raja escaped to his fort of Latifpur with his treasures and family. Three English lieutenants, Stulker, Scott and Sims, died in the Siwalla Ghat fight.[3] On 20 August, 1781, Captain Mayaffore died while operating an ill-conceived campaign in Ramnagar. The news of the disaster reached the Madhewdas Gardens, where Hastings had encamped, on 21 August. Fearing an attack by the enemy any moment, the Governor-General and his party left for Chunar at 8 o'clock in the evening of 21 August and reached there next morning. Without money or force, Hastings seemed destitute at Chunar. He wrote to Col. Morgan at Kanpur and to Col. Sir John Cumming at Fatehgarh for new enforcements. The trouble had spread to Faizabad, Gorakhpur and Saran in Bihar. Reinforcements arrived by 11 September from Kanpur, Allahabad and Lucknow; operations were carried on between 15th and 22nd of September, and the Raja's forts of

[1] Hodges, *Travels*, 46; also Hastings, *Narrative* 1-2.

[2] 2nd Report, Select Committee, 1782, Hastings to Wheler, 18 August, 1781, 477-80.

[3] Hodges, *Travels* 51.

Pateeta, Latifpur, Suckroot and Ramnagar capitulated without strong resistance.[1]

The last to be captured was Bedjigur, where Chet Singh had taken shelter with his family and treasures.[2] Thus, by 22 September, the situation had been brought under complete control.

While at Chunar Hastings had concluded a treaty on 19 September, 1781, with the Nawab of Oudh who had paid a visit to the Governor-General.[3] Under the second clause of this treaty, the Nawab was empowered to resume such jagirs in his dominions as he might think necessary. By this clause the Nawab was virtually enabled to resume the jagirs of his mother and grandmother at Faizabad, who, it was believed, had supported the late commotions at Gorakhpur and Banaras by men and money against the British and as such had forfeited all claims to British protection which was given to them in 1775.[4]

On 26th September, Hastings came back to Banaras. On 30 September he nominated Mahipnarain, the grandson of Balwant Singh, to be the Raja of Banaras.[5]

On October 25th or 26th, Impey with his wife, a surgeon, a few attendants, and Mrs. Hastings, arrived at Banaras. Hastings showed him the narrative he was writing of the Banaras insurrections, and Impey advised him that a mere narrative was not sufficient until authenticated by affidavits.[6] In his 'narrative' Hastings writes: 'I have also added attestations of all the principal facts and events, sworn before the Chief Justice, to whose advice I am obliged for having suggested it'.[7] Hastings further sought Impey's advice on the question of the Begums of Oudh. Impey thought that if the

[1] H.P., Add. Mss. 29130, 39.

[2] Bedjigur was captured on 10 November. Chunar lay 20 Miles north of Banaras, Pateeta was about 4 miles north of Chunar and Latifpur ten miles further away in the same direction; Bidjigur was 50 miles from Chunar. Raja Chet Singh escaped to Bundelkhand to survive for another 30 years as a wanderer in central India.

[3] 2nd Report, Select Committee, 1782, App. 1 B., 521.

[4] *Ibid.*, 523. In 1775 the Begums gave 30 lakhs of rupees to the Nawab on British assurance that in future they would enjoy their jagirs in peace.

[5] Mahipnarain was Bulwant Singh's daughter's son. The Zamindari was to pay Rs. 3333333-5-8 for the current year and a perpetual annual rent of Rs. 4000000 in future. On 20 October, Banaras was separated from Ramnagar and created into a separate magistracy under Ali Ibrahim Khan.

[6] *Trial of Hastings*, Vol. 1, 89.

[7] Hastings, *Narrative*, 54.

Begums had risen in rebellion against the Nawab's government the Nawab would be justified in seizing their treasure and jagirs.[1]

Then Hastings proposed to Impey that he should go to Lucknow to take affidavits as well as to intimate the resident, Middleton that he should execute the treaty of Chunar without showing any leniency towards the Begums. Impey went to Lucknow; stayed there for three days in the house of Col. Martin, told Middleton what had passed between him and Hastings, took the affidavits and came back to Chunar. This might have taken Impey the whole month of November. He returned to Calcutta by the end of December, leaving Mrs. Hastings with Hastings.

Hastings left Banaras in the first week of January and all his way back to Patna he anxiously expected a letter from the Nawab. From Buxar he wrote to Impey that neither had he received a letter from the Nawab nor was he satisfied with Middleton's conciliatory attitude towards the Begums; that in case the Nawab did not pay his dues to the Company he would abandon the Nawab and 'pay it himself'.[2]

While at Patna, Hastings received the long awaited letter of the Nawab and the news that the operations against the Begums had been completed by the resident, Middleton, between the 8th and 12th January.[3] Hastings was pleased at this news because he believed that the Nawab's debts to the Company could be discharged only when the Begums were forced to part with some portion of their 'enormous wealth'.[4]

After his arrival at Calcutta he proudly announced to his colleagues in the Council on 5 February, that the Nawab had paid to their resident at Lucknow, Rs. 44,78,490-4-8; he hoped that the remaining balance of 20 lakhs, would be shortly realised from him.[5] The Council had approved, before his arrival, all the arrangements he had made at Banaras, and his treaty with the Nawab of Oudh.[6]

This in brief is the history of Banaras insurrection. We may now turn to examine Impey's role in the episode.

He has been accused of abetting Hastings in his scheme to over-

[1] *Trial of Hastings*, Vol. 1, 92.

[2] I.P., Hastings to Impey, 16 January, 1782, Vol. 16262, 180-81.

[3] *Ibid.*, Hastings to Impey, 22 January, 1782, 182-87.

[4] Anderson Papers, Add. Mss. 45427, Palmer to Anderson, 12 February, 1782, 86.

[5] 2nd Report, Select Committee, 1782, App. 13, 623-25.

[6] *Ibid.*

throw Chet Singh and plunder the Begums.[1] This scheme it has been alleged was contrived at Calcutta before both of them left for the upper provinces.

It is true that Chet Singh, the Nawab of Oudh and the Marathas—these three figured mainly in Hastings' mind when he left Calcutta for the upper provinces. But it does not appear that he set out with a definite scheme to overthrow Chet Singh. Wheler had agreed with him on his policy towards Chet Singh. It was to exact from him a large pecuniary mulct—a sum of forty or fifty lakhs.[2] If Chet Singh refused to pay then either he was to be removed or his treasures captured. But both, Wheler and Hastings knew that the Raja was rich enough to pay the amount, if he wanted to.

Hastings had been offended at the past conduct of Chet Singh. The Raja had been ungrateful to him in intriguing with the majority members of the Council. Hastings remembered that had it not been for his influence with Shuja-ud-Daulah, in 1770, Chet Singh would not have been guaranteed in the possession of his Zamindari. With this in his mind he considered Chet Singh's subsequent intrigues with the majority members of the Council as evidence of the basest ingratitude. In June, 1777, when Clavering was attempting to wrest from him his authority of Governor-Generalship, Chet Singh had deputed a man, Sambhunath, with an express commission to Clavering.[3] Hastings further believed that the 'deliberate manner in which he made the first payment of the subsidy of that year was dictated by the doubts suggested of the firmness of my authority'; and he was morally certain "that his subsequent excuses and delays in the payment of the residue of the subsidy were caused by the belief that I was no longer able to enforce it; and possibly for such was the report, that a few months would close the period of my administration."[4]

It was therefore, a part of Hastings' policy to punish Chet Singh—to punish him by exacting from him a large sum and to humble him by a show of authority and power. Hastings had planned no more than this when he left Calcutta for Banaras.

It was with this purpose that Hastings, on his arrival at Banaras,

[1] *Articles of charge*, 40-42.

[2] Hastings, *Narrative*, Wheler's statement, 13 N.; also see affidavits of Major Palmer, 2nd Report, Select Committee, 1782, App. 2, 587.

[3] *Ibid.*, 5-6.

[4] *Ibid.*

put the Raja under house arrest, which was not necessary simply to realise the pecuniary mulct. Yet, Hastings did not apprehend that the chastisement of Chet Singh would result in a crisis. While under arrest the Raja had written two humble petitions to him. Hastings was gratified. He told the Raja: 'Set your mind at rest, and do not conceive any terror or apprehension'.[1] On receiving this assurance the Raja expressed his gratitude.

'My protector! Whenever you spread your shadow over my head, I am entirely free from concern and apprehension; and whatever you, who are my master, shall as such determine, will be right'.[2]

It was at this stage that a crowd of armed men entered the house, killed the guards, and rescued the Raja. When Hastings received this news he was actually giving instruction to Markham for final negotiation with the Raja.

It is quite possible that the rebellion was spontaneous; it was neither planned by Chet Singh nor it was anticipated by Hastings. Chet Singh is not likely to have planned it because he did not possess sufficient strength to resist the British power. It is also unlikely that he wanted to be rescued by force because he knew that the house arrest was temporary, and he would be restored to his Zamindari soon after the completion of the negotiation, which had already commenced.

If he had any intention of leading an armed revolt against the British power he would have fallen upon Hastings' camp immediately after his escape from the Siwalla Ghat house. There were, it may be observed, only a handful of men with Hastings. Instead, Chet Singh ran for shelter, not in his Ramnager fort, which was just across the river from the Siwalla Ghat, but as far as Latifpur, only to assure himself against recapture. Now Hastings would not forgive him. He also knew that his Zamindari and fortune were lost. He escaped to save his life.

Thus the Siwalla Ghat rebellion was the spontaneous work of a crowd of people, unorganised and indisciplined, stirred into action by their loyalty and emotional attachment to Chet Singh.[3]

The rebellion cost the Raja his Zamindari and was followed by

[1] 2nd Report, Select Committee, 1782, Hastings to Chet Singh, 479.

[2] *Ibid.*

[3] The Raja of Banaras is treated by the Hindus as the privileged devotee of God Vishwanath, whose famous temple is situated in the city near the Ganges.

sporadic risings in the adjoining districts of Faizabad, Gorakhpur and Saran.[1]

The question of Impey having had abetted Hastings in his scheme to overthrow Chet Singh does not arise, because there was no such definite scheme in Hastings' own mind when he left Calcutta. The only information Hastings seems to have given to Impey on his proposed Upper India tour is: 'I have determined on a visit to Lucknow, I shall depart on 15 July'.[2] Though Impey also started in July on his tour of Bengal and Bihar, the purpose of his tour was again his health.

Nearly everybody in Impey's family was sick. He was suffering from troubles in his bowels and arm and his doctors had advised him to try a change of climate, preferably a trip to England if he wanted a complete cure.[3] Lady Impey had a miscarriage in April, 1781, and since then had been sickly.[4] Their daughter, Marion, had been suffering acutely from bowel troubles since the beginning of the year.[5]

For Impey and his family an escape upcountry from the July climate of Calcutta seemed a necessity. The trip did not cure him completely but it certainly restored his health. He reported to his elder brother in England 'that the journey I took from Calcutta, has restored me to my health, in every particular but the disorder in my hand and arm, from which I have no hope of recovery but in England and I do not much expect it here'.[6] He also applied to Lord Hillsborough, the then Secretary of State for the Southern Department, for leave to visit England on health grounds.[7]

Besides, when Impey left Calcutta in July he had no intention of going beyond Patna. He met Mrs. Hastings at Moongher, where they heard of the Banaras disaster, went to Patna and from there to Bhagalpur. There they stayed while the outbreak continued at Banaras.[8] It was on 18 August, that Hastings wrote to Impey, informing him of the Siwalla Ghat massacre and for the first time requesting him to visit Banaras.[9] Of this Impey said to Barwell:

[1] 2nd Report, Select Committee, 1782, App. 2, 592-3, 605-7.
[2] I.P., Vol. 16262, May, 1781, 104.
[3] *Ibid.*, Vol. 16260, Impey to Masterman, 14 September, 1781, 46-51.
[4] *Ibid.*, Impey to Sutton, 28 April, 1781, 34-38.
[5] *Ibid.*, Vol. 16262, Hastings to Impey, June, 1781, 114-15.
[6] *Ibid.*, Vol. 16260, Impey to Michael, 30 December, 1781, 79.
[7] *Ibid.*, Impey to Hillsborough, 18 September, 1781, 58-59.
[8] Grier, *Letters of Warren Hastings*, 144.
[9] I.P., Vol. 16262, Hastings to Impey, 18 August, 1781, 146-7.

'He has asked me very earnestly and with great solitude to come to him at Banaras, I shall go there...Things have taken a strange turn, I have more influence with him than ever.'[1]

But before Impey received Hastings' letter, he had written to his friend that as troubles were afoot at Banaras, and Mrs. Hastings was alarmed and terrified about her husband's security, he would stay a little longer with her at Patna than he originally intended.[2]

From the above account it can be inferred that Impey had no prior knowledge of Hastings' policy towards Chet Singh.

Now turning to Macaulay's stricture that on reaching Banaras, Impey gave his sanction in an irregular manner to the misdeeds of Hastings and collected evidence against the Begums who were to be eventually dispossessed of their wealth.[3]

On this it may be observed that out of the total of forty-three affidavits which were given to Impey at Banaras and Lucknow only three related to the Begums of Oudh, the rest concerned Chet Singh.[4] Impey did not consider those affidavits 'as ground for seizing the treasures of the Begums; nor did he, acting as an indifferent person of authority, affix, in his own mind, any motive, beyond that of the Banaras narrative.'[5] It is true that these three affidavits did not give Hastings any additional excuse for allowing the Nawab to seize the treasures of his mother and grandmother in order to pay his debts to the Company, for, Hastings had already made up his mind on that point. The main purpose of his trip to the upper provinces was to get money from the Nawab and Chet Singh, and he knew very well that the Nawab could not pay his dues unless he, seized a portion of the enormous wealth his female relatives were hoarding at Faizabad. Accordingly, he gave that authority to the Nawab under the treaty that was signed by them at Chunar.

Impey seems to have believed in good faith that Hastings' operations against Chet Singh were justified. Whether he had strong reasons for his conviction is a different question. Perhaps his judge-

[1] *Ibid.*, Impey to Barwell, 9 October, 1781, 71-3.

[2] *Ibid.*, Impey to (?), 61-5.

[3] *Edinburgh Review*, 1841-42, Vol. LXXIV, 219.

[4] 2nd Report, Select Committee, 1782, App. 2, Affidavits, 584-613. Lieut. Col. Hanny, Macdonald and an Indian, Ahlaud Singh, had sworn separately before Impey that the Begums had supported the rebellions in Faizabad, Banaras and Gorakhpur.

[5] *Trial of Hastings*, 89.

ment was partly influenced by the high opinion he held of the character and integrity of Hastings. We find a satisfactory explanation of his conduct in one of his letters to Laurance Sulivan:

'There had been a revolution and under such circumstances which I feared might raise suspicions of his integrity; I was from the bottom of my heart convinced of the purity of his conduct, that he was incorrupt, and that all the proceedings were fair, I suggested to him the propriety of making them as public as possible, and to verify by affidavits such facts as were capable of such proof—I know how suspiciously all public transactions in India and more particularly revolutions are received in England even by the candid...and I was aware that the public contests in which he had been engaged had created him more...enemies—I feared the advantage the proceedings at Benaras might give them against him, except explained with that elucidation and candor which his writing always possess and corroborated by the strongest testimony. I suggested and urged him therefore, the propriety of giving narrative of them to the King's ministers, the directors, and to testify by affidavits...I did not doubt charges would be brought against him.'[1]

That he firmly believed in the purity of Hastings's conduct is further evinced by his concluding remarks made before the Lords on 6 May, 1788, on the 23rd day of the trial of Hastings:

'It has been objected to me as a crime, my Lords, that I stepped out of my official line, in the business of the affidavits; that I acted as the Secretary of Mr. Hastings. I did do so. But I trust it is not in one solitary instance that I have done more than mere duty might require. The records of the East India Company; the minutes of the House of Commons; the recollection of various inhabitants of India—all, all, I trust, will prove that I never have been wanting to what I held was the service of my country.'[2]

We may conclude that in advising and collecting evidence on the Banaras episode, Impey had no corrupt motive. He believed in the purity of Hastings's conduct and collected the affidavits to protect his friend against a possible malicious accusation by his enemies in England.

The Recall of Impey (1782-83)

While Impey was on tour of the Upper province he had made

[1] I.P., Vol. 16260, Impey to Sulivan, 15 April, 1782, 141-42.

[2] *Trial of Hastings*, 92-93.

two decisions; first, to return to England on leave for a short while and second, to secure for himself and Hastings seats in Parliament. The second decision was the corollary of the first. He made up his mind to return home for several reasons. The long silence since May, 1781 of His Majesty's Government on the dispute between the Court and the Council had made him uneasy and he had started considering this silence as a decision against the Court and 'an acquiescence in the annihilation of its jurisdiction by the powers of the Company.'[1] In August he got the intelligence that a Select Committee had been appointed to inquire into the Petitions against the Supreme Court. The names of the members of the Select Committee and its proceedings did suggest to Impey that its report would be unfavourable. Added to this anxiety was his doctor's advice that a short return to England would cure his disease. Above all, Hastings was intending to leave India in a year or two. That made him more willing to return to England. Hastings had desired that 'we shall both be in Parliament, and for that purpose has furnished me with draught to the amount of £10,000 on his attornies in England, for the purpose of procuring two seats, one for me, to take place the latter end of the summer 1783, and for himself the latter end of the summer 1784'.[2]

In September he wrote to Masterman and his elder brother, Michael, asking both of them to secure for himself and Hastings seats in Parliament. A seat, he thought, would enable him to meet his adversaries on equal terms.[3]

The year 1782 started with the death of his yougest daughter Harriot and the birth of his son Hastings.[4] Then he received the intelligence of his brother's illness in England. His mind was at once made up on a return to England. In March he wrote to the Secretary of State, Lord Hillsborough, that he proposed to embark on the first ship sailing after the close of the winter session of the Court.[5] He wanted to be excused for not waiting until his leave was formally granted and authorised Lord Hillsborough to lay his resignation if necessary.

Preparations for a home voyage were set on foot. Indian goods were sent by almost every homebound ship, muslin, shirts, Indian

[1] I.P., Vol. 16260, Impey to Dunning, 6 May, 1781, 61-66.
[2] *Ibid.*, Impey to Sutton, 31 August, 1781, 73-93.
[3] *Ibid.*, Impey to his brother, 14 September, 1781, 52.
[4] *Ibid.*, Impey to his brother, 18 March, 1782, 111-12.
[5] H.M.S., Vol. 163, Impey to Lord Hillsborough, 18 March, 1782, (nil).

pipe and other fancy goods. He made a remittance of £4,000 to his brother between 30 December, 1781 to 5 February, 1782;[1] a further remittance of Rs. 54000 was made in April, 1782.[2]

In June, 1782, he received a letter from Sutton, informing him of the passage of the Act of 1781.[3] He wrote to Dunning:

'Mr. Sutton has acquainted me with the event of the Petitions against the Court; it is not worse than I expected from the turn what the issue was to take.'[4]

In London the situation had taken an unfavourable turn for Impey. The first Report of the Select Committee which related to Impey's appointment to the *Sadar Diwani Adalat*, was submitted to the House on 5 February, 1782. On the motion of General Smith, on 3 May, 1782, the House resolved to present an address to His Majesty to recall Impey, 'to answer to the charge of having accepted an office granted by, and tenable at the pleasure of, the servants of the East India Company, which has a tendency to create a dependence in the said Supreme Court upon those over whose actions the said Court was intended as a control, contrary to the good purposes and true intent and meaning of an Act of the 13th of His Majesty's reign.'[5]

In March, 1782, North's government had resigned. In July Lord Rockingham died and Shelburne became the Prime Minister. Impey got this happy news in October and hastened to congratulate him.[6] His old friend having come in power, there seemed no reason to pack for home. Thus Impey requested Shelburne to accept his letter as a complete repudiation of what he wrote before about his desire to return home.[7]

But Shelburne was in a difficult Parliamentary situation. If the Fox and North groups combined, his minority could not carry anything. He was dependent on the younger Pitt and Dundas, who was committed to recall Hastings. For these reasons, and because Fox was accusing him of sheltering criminals, Shelburne had to occupy some ground by way of compromise, before Parliament met in the autumn. Hence with much reluctance he had issued an order for Impey's recall on 8 July, 1782.[8]

[1] I.P., Vol. 16260, Impey to his brother, 5 February, 1782, 100-1.
[2] *Ibid.*, Impey to his brother, 16 April, 1782, 113-15,
[3] *Ibid.*, Impey to Sutton, 6 June, 1782, 140-41.
[4] *Ibid.*, Impey to Dunning, 6 June, 1782, 142.
[5] Parl. Debates, Vol. 22, (1782), Cols., 1411-12.
[6] I.P., Impey to Lord Shelburne, 18 October, 1782, 169-72.
[7] *Ibid.* [8] H.M.S., Vol. 162, 25.

In October, Impey received an intelligence of a 'hostile resolution' of the Commons, but he did not know its contents. He assessed all the charges which Francis might have circulated against him. He recalled that on 3 April, 1779, Francis had written a letter to the Secret Committee of the Court of Directors, accusing him of participating in or having the profits of a contract entered in the name of James Fraser. He wrote to his brother, Sutton, and Thurlow assuring them that he had no interest in the *Pool-Bandi* (bridge-construction) affair:

'With regard to Fraser's contract I call God most solemnly to witness that I have not been nor do or shall expect to benefit directly or indirectly one atom by it.'[1]

The hope which Shelburne's elevation to the office of the first secretary had aroused in him was soon shattered by the news that the House had passed the recall-motion, which he received on 29 October, 1782.[2] He then booked his seat in a Danish ship for a passage to England.[3]

It was at this time, when he had given up hope, that he received on 4 November, 1782, an encouraging letter of Thurlow, dated some time in May, 1782.[4] This letter was written to him after the House had voted for his recall. Thurlow had assured him of his full support, approved his conduct and desired him to stay until formally recalled. Accordingly he laid aside his plan of returning to England at least for the current year, cancelled his passage, thanked Thurlow for his support, hoping that His Majesty would not send a letter of recall.[5] He wrote to Barwell: 'I think I am bound in honour and gratitude not to desert my post except I receive an official recall under His Majesty's authority.'[6] He decided to stay for at least a year longer if he was not recalled.[7]

He was fearless though not very certain about the future. Hence he wrote to his brother on 29 November, 1782, asking him to consult Lord Ashburton, Richard Sutton and his other friends as to whether it would not be proper to resume negotiations for a seat in the Parliament.

[1] I.P., Vol. 16260, Impey to his brother, 19 October, 1782, 174-79.
[2] *Ibid.*, Impey to Thurlow, 29 October, 1782, 183-87.
[3] *Ibid.*, Impey to his brother, 17 November, 1782, 192-93.
[4] *Ibid.*
[5] *Ibid.*, Impey to Thurlow, 15 November, 1782, 189-91.
[6] *Ibid.*, Impey to Barwell, 18 November, 1782, 119-201.
[7] *Ibid.*, Impey to Cator, 22 November, 1782, 202-3.

In the meantime he had relinquished the judgeship of the *Sadar Diwani Adalat* on 5 November, 1782. To Dempster he wrote that his resignation had been occasioned by the Act of 1781, which had turned the *Sadar Diwani Adalat* into a Court of records and had assigned criminal jurisdiction to it.[1] It is possible that the intelligence of his recall might have occasioned his resignation. The Act of 1781 reached him in June, the news about the vote of recall in October.

Shelburne's letter of recall reached him on 27 January, 1783.[2] On 29 January he wrote to Shelburne and on 11 March to Townshend, one of the principal secretaries, that as Lady Impey was to lay in bed during June and the weather conditions were not favourable for a sea voyage, his passage to England might be delayed for a few months.[3] The French remained the masters of the Bay of Bengal; so that no British ship could safely leave the Hoogli for Europe. Impey, therefore, was compelled to remain for nine months longer in Calcutta.

Nothing happened to change this general position in 1783, except for the arrival of Sir William Jones in September.[4] In November, the Council booked a passage for Impey.[5] On 3 December, 1783, he finally embarked with his family on board the Worcester.[6]

[1] *Ibid.*, Impey to Dempster, 18 November, 1782, 216-21.

[2] Impey, *Memoirs*, 270.

[3] H.M.S., Vol. 178, 681-84.

[4] I.P., Vol. 16264, Jones to Impey, 16 September, 1783, 232; Sir William Jones had been appointed in the place of the Late Justice Lemiastre.

[5] H.M.S., Vol. 187, Council to the Directors, 3 November, 1783, 42.

[6] Impey reached England in June, 1784 and retained the rank and title of Chief Justice up to 10 November, 1787, when he officially resigned it; in 1790 he took his seat in Parliament as member for New Romney. In 1801, he visited Paris and was presented to Napoleon. In September, 1809, he was seized by a physical disorder, caused by effusion of serum on the brain, and died about midnight on 1 October, 1809, in his seventy-seventh year. (Impey, *Memoirs*, 350-413.)

CONCLUDING REMARKS

The establishment of a rule of law was a great British contribution to modern India. Under this the life and property of the subject people were governed by laws passed by a legally constituted body. All governmental powers were exercised according to law. Any violation of an individual's rights to life, property and freedom by an arbitrary and coercive measure of the Government was illegal. Nobody, howsoever humble, could be deprived of his fundamental rights except according to the process of law. The law was impartially administered by an independent judiciary which could also by issuing various writs exercise judicial control over administrative actions.

When these principles of English law were first introduced into Bengal by Impey and his fellow judges there arose conflicts and a certain amount of confusion. The Mughal system of government, which the English Company had adopted in Bengal, was dictatorial, arbitrary and coercive. It served the commercial and colonial purposes of the English but was contrary to English law. Thus, the conflict which ensued between the Supreme Court and Supreme Council was in fact a conflict between a rule of law and arbitrary methods of government.

This conflict involved the judges in a double task. On one hand they had to struggle against the Supreme Council for the independence of the Supreme Court and on the other they had to protect the Indians from the arbitrary and corrupt exercise of powers by the Company's servants.

The Government's opposition to the Supreme Court was pitched more on grounds of personal prejudice than on principle. The three new councillors, being in a majority, ran the government in the early years. They were quite opposed to Hastings, and their aim was to remove him. They resented the Supreme Court, which, since its inception, had been functioning as a check on the government under its Chief Justice who happened to be a schoolboy friend of Hastings. It soon became their plan first to attempt to bring the Supreme Court under their dominance, failing which to annihilate it. Accordingly they first tried to undermine its independence by making its officers dependent upon the Council for their salaries and

fees. The judges strongly resisted this and the relationship between the two grew tense and bitter. At this time Nandkumar came to be tried for forgery. Since he was their protégé and they had used him against Hastings, they put every possible obstacle in the way of the Supreme Court and were even determined for a while to set him free by force.

Nandkumar had committed forgery perhaps with an original motive to benefit the relatives of Bulaki Das who by his will had bequeathed a large portion of his fortune to charities. Forgery by the then English law, which was administered in Calcutta, was punishable by death. But the judges might have given him a respite had his case not turned into an issue of independence for the Supreme Court.

The trial and execution of Nandkumar established the independence of the Supreme Court. Now the conflict between the Court and Council took other turns. Having failed to control the Court the new Councillors decided to make it inactive. Intending suitors were discouraged by threats to come to the Court, and those who had already supported the Court or sat as jury in its proceedings were arbitrarily imprisoned, dismissed from their office or deprived of their fortune. The judges tried to control this abuse of power by issuing writs of *Habeas Corpus* and requiring the Councillors to observe rules and forms.

The death of Monson, and of Clavering, subsequent to his abortive efforts to assume the Governor-Generalship of Bengal, took away the element of personal rancour from the conflict that persisted between the Court and Council. Hastings' opposition to the Court, following his recovery of power, was based partly on matters of expediency and partly on principle. It was an opposition directed to the Court's methods in protecting the Indians from the coercion and corruption of the servants of the Company.

Impey and his fellow judges had realised soon after their arrival in Bengal that there were three main categories of people at whose hands the Indians suffered most in the provinces. The first category consisted of those who were directly or indirectly employed by the Company in the collection of revenue. In this class were included the members of the provincial councils, farmers and collectors of revenue, and the Zamindars. The farmers and Zamindars, being the intermediaries between the Government and the ryots, occupied a key position in the revenue administration of the country. It had

been their practice to borrow large sums of money from the Indian bankers either at the time of the settlement in order to acquire the tenancy of the farm or during the course of their tenancy in order to meet the annual demands of the Government and the various charges attending their several concerns. The Indian bankers had virtually no legal remedy against them if they failed to discharge their debts, for, it was the policy of the provincial council to protect them against any such liability. It was argued that if private suits for the recovery of debts were allowed against the farmers and Zamindars they would fail to pay their rent to the Government. In spite of this protection if they did not pay their revenue regularly no regard was shown to them and they were arbitrarily imprisoned and coerced until they paid their dues to the Government. No laws, no forms whatsoever, were observed in the relationship of these intermediaries with the members of the provincial council on one hand and the ryots and bankers on the other.

The second category comprised those who were entrusted with the administration of civil and criminal justice in the Company's courts. These were again the members of the provincial council in their capacity as the judges of the *Diwani Adalat* and supervisors of the *Faujdari Adalat*. Mainly because of their heavy occupation in revenue affairs and in the furtherance of their private trade and partly because of their general unconcern about the well-being of the people, they had practically abandoned their judicial functions to the poorly paid subordinate Indian law officers. If they at all exercised their judicial powers it was mainly in the furtherance of their commercial or revenue functions. The administration of justice in the Company's Courts, therefore, had become corrupt, irregular and oppressive.

To the third category belonged the private English merchants, who by the mere fact of belonging to the ruling race exercised illegal powers and coercion over the Indians in fostering their private trade.

As the Supreme Court was not empowered to supervise and control the proceedings of the civil, criminal and revenue courts of the Company, the only way it could grant any relief to Indians against the members of the first and second categories was to hold them amenable to its jurisdiction in their individual capacity, as persons directly or indirectly employed in the service of the Company. The members of the third category were directly under the

jurisdiction of the Court. The judges, therefore, entertained private suits against those who were directly or indirectly employed by the Company, including in the latter category the farmers and Zamindars. They challenged the power of the Company's servants to imprison a person indefinitely without bail or trial. They almost stopped this practice by issuing writs of *Habeas Corpus* and holding a punishment for contempt of Court to those who disregarded the writs. The judges further enforced contracts by making the Company's servants discharge their private contractual obligations. They considered it an act of manifest corruption on the part of the Company's servants to abandon their judicial functions to their subordinates, and held them liable to damages to the aggrieved party. In granting these reliefs the Supreme Court always acted on the basic principle of English law—the equality of all before the law. No consideration was shown to the rank, status, colour or sex of the party concerned.

These measures of the Supreme Court aroused the opposition of Hastings's Government and their servants right down to the district level. It was argued that if the Supreme Court persisted in establishing egalitarian principles between the Indians and Europeans and summoned a European to answer to the charges levelled against him by an Indian, the Government would be degraded and weakened in the eyes of the Indians and every Englishman of rank would be reduced to the level of the lowest Indian. The Company's servants complained that the Company's revenue suffered losses as a result of their being deprived by the Court of the coercive methods of collecting revenue. The Company's revenue would suffer further losses if the Zamindars became amenable to the Supreme Court's jurisdiction and were made to discharge their private debts.

Hastings's support for the Supreme Court was weakened by his prime need for money to finance the wars with the Marathas and his short-lived alliance with Francis. He, therefore, temporarily came under the pressure of an agitation against the Court and decided to use force against the Supreme Court on the question of a Zamindar's amenability to its jurisdiction.

The Supreme Court was thus paralysed. During the crisis representations were made against the Court to the London authorities by the Council and the English merchants. The Supreme Court's stand in its conflict with the Council was deliberately misrepresented. It was alleged that the proceedings of the Supreme

Court had endangered the Company's government and their revenue. Taking into account these and the recent American reverses, Parliament was inclined to believe that an autocratic system of government was more likely to preserve the British possessions in India than a balanced system of government which the Supreme Court had tried to introduce into India. Accordingly the powers and functions of the Supreme Court were abridged by the Act of 1781.

While Parliament was deliberating over the above measure, the crisis in India had been resolved by an agreement between the Council and Court. After the rupture of his alliance with Francis, and the latter's subsequent departure from India, Hastings found himself free and powerful enough to put the Company's affairs in order and to repair the damage to the Supreme Court. He realized the prime need of reorganizing the Company's Courts, of bringing them under the supervision and control of a competent authority and of bridging the wide gulf that existed between them and the Supreme Court. Accordingly he reorganized the Company's Courts and brought them under the supervision and control of Impey by appointing the latter as the judge of the *Sadar Diwani Adalat*. It was under Impey's short supervision that the Company's Courts assumed for the first time a semblance of justice. He gave them a code of rules and procedure and a professional guidance which they needed most. Though it did not bring about a fusion of the Company's and King's Courts, it gave an opportunity to Impey to be at the head of both systems and to establish a uniformity in the administration of justice.

The settlement and its sponsors, however, soon fell a victim to party politics in Parliament. The enemies of Impey and Hastings, led by Burke and Francis, misinterpreted it as a monstrous arrangement devised to establish in India a Hastings-Impey supremacy. The House was led to vote for Impey's recall. Impey's friend, Shelburne, was then in power but he was dependent on the support of Pitt and Dundas who were committed to recall Hastings. As a political compromise, and with much reluctance, Shelburne signed the letter of recall on 8 July, 1782. Thus was the Indian career of Impey brought to an unhappy and perhaps untimely end. But the principles of English law which he and his fellow judges had introduced into India survived.

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INDEX

Act, 5 Elizabeth I, 78, 79
—of 1701, 1
—of 1729, 78, 80, 99, 106-108
—of 1773, 30-39, 156, 207, 208, 209
—of 1781, 207, 229, 234
—of 1853, 127
—of 1861, 127, 214
Admiralty Courts, 2
Africa, 6
Ahmuty, Lt.-Col., 178, 187, 195
Akbar, 9
Ali, Haidar, 5, 33
Ali, Hussain, 66
Ali, Jaffier (Mir Jafar), 18, 48, 50, 51, 54, 84
Ali, Kasim (Mir Kasim, Muhammad Kasim Khan), 8, 10, 48, 81, 82, 84, 90
Ali, Mir Ausad, 89, 90, 96
Ali, Mirza Muhammad, 152
Ali, Mir Hussain, 151
Ali, Nizam, 5
Allahabad, 218
Alwal, 18
American war of independence, 131, 173, 174, 180, 194, 234
Anderson, David, 153, 217
Anstrucher, John, 147
Asaf-ud-daula, 215, 216
Ashburton, Lord, 228
Aurangzeb, 3, 7, 20
Auriol, J. P., 120, 121
Avaz, Haji Muhammad, 144

Balkissen, 55
Bamford, Lt., 178
Banaras (Benares), 48, 57, 94, 119, 214-219, 220-225
Bangulal, 88
Baracktoolah, 132, 134
Baroda, 5
Barwell, Richard, 43, 44, 52, 53, 57, 58, 61-63, 68, 75, 100, 103, 106, 113, 118, 119, 123, 129, 130, 171, 176, 178, 179, 183, 184, 187, 209, 223, 228
Bathurst, Lord, 39, 112, 128
Becher, Robert, 13, 14, 23
Bedjigur, 219
Beg, Allum, 132, 138
Beg, Behdar, 131-136, 139, 142-146
Beg, Gyrut, 143, 144
Beg, Qazi Mouzzam, 144
Bagum, Munny, 50-52, 54, 55, 70
Begum, Naderah, 131-134, 138-142, 145, 146, 148, 203
Bengal, 1, 5-7, 9, 10, 12-17, 19-21, 24, 26, 27, 29, 30, 33, 35, 36, 43, 47, 50, 62, 69, 70, 78, 81, 97, 110, 119, 123, 124, 132, 159, 166, 167, 170, 180, 187, 191, 193, 200-202, 208, 214, 223, 229-231.
—Diwan of, 6, 8, 11
—Nawab of, 5-7, 10, 12, 16, 47, 48, 51, 69
Beveridge, H., 57, 101, 104, 108
Bhagalpur, 25, 223
Bhonsla, 5
Biggs, Sir John, 2
Bihar, 6, 12, 15, 36, 70, 146, 166, 201, 202, 214, 217, 218, 223
Bird, 132
Blackstone, 112
Board of Commerce, 168
Board of Revenue, 15, 16, 102
Bogle, George, 58(n), 142, 143, 148, 182, 183
Bolts, William, 32
Bombay, 2, 6, 12
Booth, 191, 196
Brix, 97, 178
Budhinath, 190, 191
Burdwan, 15, 26, 88
—Rani of, 183
Burke, Edmund, 34, 36, 108, 147, 199, 234

Buxar, 48, 90, 218, 220
Byng, Admiral, 100

Cadell, 58
Calcutta, 2, 6, 12, 13, 15, 16, 19, 20, 25-29, 35-37, 42, 44, 48, 52, 55, 56, 58-60, 67, 69-71, 73, 74, 77-79, 81, 82, 84, 88, 89, 97, 100, 103, 113, 117, 122-126, 131, 134, 135, 138, 140, 148, 150, 153, 156, 158, 174,177, 185, 189, 190, 192, 195, 197, 214,215, 217, 218, 220, 221, 223, 229, 231
Carnac, General John, 48
Carnatic wars, 5
Chakravarti, Durgacharan, 148
Chambers, Robert, 39, 40, 78-80, 106, 121, 130, 136, 161, 163, 164, 179, 201, 203, 206, 207, 212, 213
Chandernagar, 5, 159, 162
Charter of 1726, 3, 27, 28
—of, 1753, 27, 28, 80
—of, 1774, 80, 97
Chaube, Jaideo, 88, 89
Chaudhari, Rupenarain, 88
Chief Justice, See Impey
Chinsura, 5, 164, 213
Chittagong, 15, 25, 49
Chunar, 215, 218, 220, 224
Clavering, General John, 41, 44, 50, 52, 59, 63, 75, 80, 88-90, 102-104, 110, 118, 126-128, 159, 183, 186, 187, 212, 221, 231
Clive, Lord Robert, 12, 31-33, 44, 47, 49, 86, 95, 125, 196
Cochin, 5
Coke, Sir Edward, 1
Committee of Circuit, 16, 17
Cooly Bazar, 99
Coote, Sir Eyre, 84, 85, 188, 197-199, 212
Cornwallis, Lord, 17
Cottrell, Henry, 113, 116, 168, 169
Court of Common pleas, 1
Court of directors, 24, 29, 45, 46, 49, 57, 70, 79, 82, 102, 114, 115, 117, 118, 119, 122
Court of Oyer and Terminer, 27-29, 37, 62, 79
Cowe, Captain, 150
Creasy, James, 165, 166, 169
Cumming, Sir John, 218

Dacca, 26, 81
—Council, 149-151
—Court, 150
Daman, 5
Das, Bulaki (Bolankee Doss), 72, 81-96, 104-106, 231
Das, Kissen Jaun, 72, 90, 91, 96
Das, Padmmohan, 83, 86, 90-93, 103, 106
Day, Sir John, 138, 139, 154, 155, 177, 178, 187-190, 196, 202, 206
Delhi, 9, 47
Dempster, George, 193, 229
Dinajpur, 191
Diu, 5
Dow, Alexander, 32
Dowdeswell, 34
Doyly, 163
Droz, Simeon, 132
Ducarel, Gerard, 161
Dullaroy, Roy, 152
Dundas, Henry, 147, 227, 234
Dunning, 40, 103, 128, 129, 169, 171, 190, 193, 201, 207, 213, 227
Durgavati, 90
Durham, Hercules, 73, 75, 87, 93
Dutt, Gowrychand, 152-156, 188, 205

East India Company, 2, 5-8, 11-17, 19-21, 23, 24, 29-33, 43-45, 48-51, 53, 55, 69, 70, 74, 80, 82, 92, 112, 114-116, 119, 136, 145, 147-149, 151, 152, 154, 157, 159, 165, 170, 172, 189, 195, 207, 217, 220, 225, 230-234
Ellerengton, Edward, 98
Elliot, Alexander, 75
Elliot, Sir Gilbert (later 1st Earl of Minto), 58, 107, 108, 146, 147
Enayatulla, 144
English law, 1, 2, 24, 29, 35, 72, 79, 95, 97, 107, 125, 126

Faizabad, 218, 219, 223, 224

Farukhsiyer, 79
Farrer, Thomas, 58, 62, 73, 77, 80, 85, 87, 97, 98, 104, 105, 107
Fatehgarh, 218
Fawcett, Sir Charles, 29
Foby, George Richard, 153
Ford, Francis, 150
Fort St. George, 6
Fort William, 15, 100, 124, 214
Fowke, Francis, 58, 61, 216, 217
Fowke, Joseph, 44, 58, 60-68, 71, 80, 98, 111, 113, 117, 119
Fox, James, 34, 125, 227
Francis, Philip, 41, 44, 51, 52, 53, 58, 79, 99, 100, 103, 110, 126, 127, 130, 156-166, 176, 179, 183, 187, 189, 196-206, 228, 233, 234
—Mrs., 158, 162
Fraser, James, 228
Fullerton, 48

Gaekwar, 5
Gangabissen, 72, 87, 94, 104-106
George I, 79, II, 79, III, 33
Ghose, Banarsy, 58, 59, 116
Goa, 5
Godfrey, Daniel, 163
Golding, Edward, 132
Gorakhpur, 218, 219, 223
Goring, Charles, 114
Govindpur, 27
Graham, John, 51, 54, 57, 60
Graham, Thomas, 216
Grand, G. F., 156-162, 187
—Mrs. (later Lady Talleyrand), 157-162
Gujrat, 4
Gurudas, Raja, 50, 51, 54, 56
Gwalior, 5

Habeas Corpus, 17, 112, 113, 140, 149, 150, 204, 231, 233
Harwood, 191
Hastings, Warren, 13, 15-17, 25, 39, 41-44, 47, 49-59, 61-64, 67, 68, 101-104, 106, 108, 111, 113, 116, 118, 119, 123, 127, 129, 130, 157, 159, 164, 166, 178, 179, 181, 183, 186-188, 196-206, 214-227, 230-342,
Hastings' Bridge, 100
Hajurimal, 88
Head vs. Mullins, 40
Heath, 39
Hickey, William, 100, 165
Hidgellee, 110, 111, 113
Hillsborough, 223, 226
Hogarth, John, 153
Holkar, 5
Hoogli, 47, 101, 110, 229
Hosea, William, 152, 153
Hughes, Sir Edward, 100
Hussain, Gulam, 51
Hutto, 66
Hyde, John, 39-41, 72, 75, 76, 78, 86, 94, 103, 112, 113, 121, 149, 157, 161, 177, 179, 189, 195, 203
Hyderabad, 5, 176

Impey, Sir Elijah, 35, 37-42, 46, 47, 56-59, 62, 63, 68, 70, 73-80, 87, 94-108, 110-115, 117, 120-130, 135, 136, 140-147, 152, 155-175, 178-181, 184-191, 194-213, 215, 219, 220, 222-231, 234
—Mrs., 40, 214, 219, 223, 229
—Barwell, 29
—Elijah (father of), 39
—Harricott, 226
—Hastings, 226
—James, 29
—John, 40
—Marion, 214, 223
—Michael, 39, 128, 212, 226
Indore, 5
Ironside, Col., 169

Jaggarnath, 55, 84, 151
James I, 1
Janeky, Rani, 116
Jarret, 91
Jephson, 29
John, Dr., 2
Johnson, Dr., 40
Johnston, George, 108, 202

Kabul, 132, 138, 144, 145

Kanpur, 218
Kashinath, 88, 177-179, 181, 184, 188-190, 195
Kasijora, 177, 178, 180, 184, 188, 195
—Case Chapter VII, 196, 197, 200, 204, 206
—Raja, 173, 176-179, 181, 185, 187
Kenyon, Lord, 39
Kerby, 168, 171
Khan, Kamaluddin (Abdul Muhammad Kamal), 58-61, 63-68, 72, 81, 83-89, 95, 96, 110-117
Khan, Murshid Kuli, 9, 10, 20
Khan, Reza, 14, 49, 50, 56, 84, 85
Khan, Sahbaz Beg, 132, 133, 138, 143-145
Khan, Syed Ali, 151
Khyru, 151
Kishenchand, 116

Lagoorda, Anna, 162
Latifpur, 218, 219, 222
Law, Ewan, 132
Lemaistre, Justice, 39-41, 72, 75, 76, 78, 80, 94, 103, 121
Lucknow, 215, 217, 218, 220, 222-224
Lyons, 116

Macauley, T. B., 101, 104, 107, 108, 208, 224
Mackintosh, 58
Macleane, Lauchlin, 54, 57, 102
Macrabie, 41, 110
Madras, 2, 6, 12, 41, 100
Mahe, 5
Mahipnarain, Raja, 219
Makhdum, Gulam, 132, 134
Malcolm, 143, 144
Malwa, 4
Mancor, 88
Mansfield, James, 39, 208
Marathas, 4, 5, 20, 176, 200, 217, 221, 233
Markham, William, 218, 222
Martin, Col., 220
Masterman, 103, 226
Mayaffore, Capt., 218
Mayor's Court, 3, 27-29, 37, 45, 77, 104
Meerum, 160, 162
Metre, Radhacharan, 79, 98, 99, 107
Middleton, Samuel, 100, 152, 220
Midnapur, 15, 176-179, 185, 187
Mill, James, 107, 108, 143, 208, 209
Monson, Col. George, 41, 50-53, 56, 80, 98, 110, 117, 126-128, 159, 186, 187, 231
Moongher, 214, 223
Morgon, Col., 218
Motte, Thomas, 118, 119
Mubarak-ud-daula, 50, 52, 54, 69, 123
Muhammad, Yar, 60, 65, 66, 88, 89
Murshidabad, 12, 13, 15, 16, 20-23, 25, 26, 52, 56, 98, 123, 140, 150, 152, 153
Mysore, 4, 5, 176

Nagpur, 5
Najm-ud-daula (Nadjumul-ul-Dowl, Nutchum-al-dawla h), 56, 84
Nandkumar, 46-71, 72-110, 111, 115, 116, 231
Nath, Chaitnya, 88, 89
Naylor, North, 133, 142, 178, 179, 184, 187
Newman, 180
Nicholls, John, 157
North, Lord, 33-35, 111, 127
Nubkissen, 49, 50, 84, 100, 105

Orissa, 6, 36, 70
Oudh, 5, 48, 214, 215, 219, 224, 215-217, 219-221, 224

Palmer, Maj., 158, 217
Panipat, battle of, 4
Pateeta, 219
Pathak, Sabut, 84
Patna, 6, 12, 15, 26, 48, 84, 85, 140, 144, 145, 220, 223, 224
—case Chapter V, 152, 154, 188, 192, 204
—council, 132-136, 138-143, 155
Pearce, Col., 169
Peat, 149-152
Peiarce, John, 177
Pitt, William, 147, 227, 234

Plassey, battle of, 5, 6, 20, 51, 69
Pleydell, 100, 110
Pondicherry, 5, 49
Poona, 4, 5
Prasad, Kali, 116
Prasad, Mohan, 51, 63, 72, 73, 83-87, 91-96, 104-106
Privy Council, 28, 114, 138, 139, 147, 164
Purling, J., 187
Purnea, 60, 68

RADHACHARAN, 58, 62, 69, 70, 89, 98
Rajshahi, 24
Ram, Doorlabh, 49, 50
Rambux, 160
Ramcharan, 48
Ramnagar, 218, 219, 222
Regulating Act, 30-39
Regulation of 1772, 25, 30, 114
Robinson, John, 80, 98, 100
Rochford, Earl of, 156
Rockingham, Lord, 227
Rouse, C. W. B., 24, 105, 106
Rous, Boughton George, 172, 175, 208
Roy; Bassant, 111, 114, 116, 117
Roy, Mehtab, 81, 87, 88, 95, 96
Roy, Padmavallabha, 47
Roy, Raghunath, 81
Roy, Saheb, 88
Roy, Sambhunath, 97
Roy, Sitab, 14
Roy, Tyagi, 87, 88

SADANAND, 55
Sadee, Qazi, 133-135, 138
Sadruddin, 59-61, 64, 68
Santiram, 100
Saran, 218, 223
Sarupchand, 149
Scott, Maj. John, 119, 200, 201, 218
Seochand, 116
Seth, Jagat, 49, 50
Sevaram, 55
Shakespeare, 149, 201
Sharma, Ramkishore, 191
Shee, George, 158-162
Shelburne, William Petty, 227-229, 234
Shivaji, 4
Shore, John (Lord Teignmouth), 158
Shuja, Prince, 7
Silabat, 81, 83, 84, 87, 88, 96
Sindia, 5
Singh, Bahadur, 183
Singh, Raja Chet, 215-219, 221-224
Singh, Ganga Govind, 59, 61, 64-66, 68, 86, 111
Singh, Lollau Doman, 88, 89
Singh, Nur, 55
Singh, Raja Balwant, 48, 215, 219
Siraj-ud-daula, 5, 47, 51, 56, 215
Smith, Adam, 32
Smith, Gen., 173, 192, 202, 227
Solomans, Cojah, 79
Starke, 94
Stulker, 218
Stewart, John, 110, 117-122
Suckroot, 219
Sukum, Bebee, 140
Sulivan, Laurence, 51, 53, 101-103, 129, 130, 225
Sundernarain, 176, 179, 184, 189, 193
Surat, 2, 5, 6
Satanaut, 27
Sutton, Richard, 129, 181, 190, 193, 209, 211, 227, 228
Swainston, William, 178
Sykes, Francis, 23

THORNTON, COL., 63
Thurlow, Edward, 1st Baron, 39, 40, 128-130, 141, 170, 184, 185-187, 209-212, 228
Touchet Committee, 175, 191
Townshend, 229

VANCOLSTER, M., 82
Vansittart, George, 44, 49, 61-63, 72, 93, 102, 105, 106, 127
—Henry, 44, 49
Verelst, Harry, 14

WALLACE, 40, 206, 208, 211
Watson, Lt..Col., 165, 169

Weymouth, 128, 152, 165, 168-170, 173, 180, 184, 185, 197
Wheeler, Edward, 166, 176, 179, 197-201, 203, 205
Whittall, 29
White, Thomas, 139
Wills, 40
Williams, Dr., 94
Wilson, 145
Wroughton, George, 139, 184

Yeandly, Mathew, 73
Young, William, 132, 135

Zekeria, Cojah, 133, 140, 144, 145